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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. 174.

EDWIN C. LITCHFIELD, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF HAMILTON, AND HIRAM BENNETT, TREASURER OF SAID COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED AUGUST 31, 1877.

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1 Supreme court of Iowa.

EDWIN C. LITCHFIELD, APPELLANT,
vs.
THE COUNTY OF HAMILTON AND HIRAM Bennett, treasurer of said county, appellees.

Be it remembered that on the 14th day of May, 1874, the appellant, by his attorney, filed in the office of the clerk of the supreme court of Iowa, under the rules, a transcript of the proceedings in the court below in the above entitled cause in words and figures following, to wit:

1½ APPELLANT'S ABSTRACT OF RECORD.

In the supreme court of Iowa. December term, 1873. In equity.

EDWIN C. LITCHFIELD, APPELLANT,
vs.
THE COUNTY OF HAMILTON, AND HIRAM Bennett, treasurer of said county, appellees.

Appeal from the decree of the Hamilton district court.

J. M. Ellwood, for appellant.
W. J. Covil, for appellees.

On or about the day of December, 1868, the plaintiff filed in the Hamilton district court an amended petition herein, stating his cause of action substantially as follows:

1. That plaintiff is a resident of New York; and that the De Moine Navigation & Railroad Company, in bill described, is a corporation subsisting under the laws of Iowa.

2 2. That the defendant, Hamilton County, is a municipal corporation; and that the defendant, Bennett, is the treasurer.

3. That on August 8, 1846, the Congress of the United States passed the act for the improvement of the navigation of the Des Moines River.

4. That on May 6, 1854, the said De Moine Navigation & Railroad Company was organized and created.

5. That after the passage of the said act of August 8, 1846, up to and until the decision of the Supreme Court in the case of Litchfield vs. Dubuque & Pacific Railroad Company (at Dec. term, 1859), the executive officers, both of the United States and the State of Iowa, and the said company, uniformly treated the said grant as embracing and passing to the State of Iowa all unsold and unappropriated lands lying in the alternate sections designated by odd numbers, within five miles of the Des Moines River, from its mouth to its source; and that a great portion of the said lands were certified and approved to the State of Iowa by the United States as passing under the grant contemplated by said act of Aug. 8, 1846.

6. That after the decision of the Supreme Court, in Litchfield vs. Dubuque & Pacific Railroad Company, holding that the grant did not extend above the Raccoon Forks, and on or about the second day of March, 1861, for the purpose of carrying out the construction and interpretation which had been given to said grant, the Congress of the United States passed and adopted the joint resolution relinquishing to the State of Iowa all the interest of the United States in said lands (a copy is set out in original petition), and is as follows:

Joint resolution to quiet title to lands in the State of Iowa, approved March 2, 1861.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the title which
3 the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Forks thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior, as part of the grant by act of Congress, approved August 8, 1846, and which is now held by bona fide purchasers under the State of Iowa, be and the same is hereby relinquished to the State of Iowa.

Approved March 2, 1861.

7. That for the further purpose of securing the title to said lands to the State under said grant, the Congress also passed the act of July, 12, 1862, entitled "An act confirming a land claim in the State of Iowa, and for other purposes."

8. That the State claiming the said lands certified to it under act of August 8, 1846, and on the 3d of May, 1858, conveyed the same to the said De Moine Navigation & Railroad Co., including those lying in Hamilton County, and described in list annexed to original petition.

9. That under deeds executed to plaintiff by the said De Moine Navigation & Railroad Co., he claims and holds the title to the lands in Hamilton County, described as follows, to wit: The west half of northwest quarter of section 31, twp. 86, range 26; the SE. ¼ NW. ¼ of same sec., twp., and range; W. ½ SW. ¼ sec. 5, E. ½ NW. ¼ and NE. ¼ SW ¼ sec. 17; NE. ¼ NW. ¼ sec. 21; SW. ¼ and W. ½ SE, sec. 23; all sec. 27, E. ½ SW. ¼ and NW. SW. sec. 29; all sec. 33, and all of sec. 35 in twp. 87, range 26, and N. ½ sec. 31, twp. 88, range 26.

10. That, notwithstanding the plaintiff believes his title to said lands is perfect and complete, yet his property therein is materially injured and his title clouded and embarrassed and rendered doubtful and uncertain by the acts of the executive officers of the United States and of the State of Iowa, who assert and claim title thereto.

That the State of Iowa and its agents claim that portions of said lands passed and belong to the State under the 500,000 acre grant
4 for school purposes, and the agents of the State have assumed to sell portions thereof as school lands; that after the passage of said joint resolution of March 2, 1861, and of the said act of July 12, 1862, the Commissioner of the General Land Office requested the governor of Iowa to report to that office what tracts were held by bona fide purchasers under the State, in order that the proper lists could be prepared and the lands released to the State under said act and resolution; that the governor complied with said request; that controversies and delays intervened so that said lands were not certified to the State until about the 14th of June, 1866; that after the passage of the joint resolution of March 2, 1861, and the act of July 12, 1862, and the decision of the Supreme Court in Litchfield vs. Dubuque & Pacific Railroad Co., the Commissioner of the General Land Office, under direction and approval of the Secretary of the Interior, certified to the State of Iowa as passing to it under the joint resolution of May 15, 1856, most of the said lands which had been previously certified to the State under the act of Aug. 8, 1846; that about June 14, 1866, the Department of the Interior certified to the State of Iowa, under joint resolution of March 2, 1861, all of said lands in said joint resolution referred to as having been improperly certified, except those before that time certified to the State under act of May 15, 1856, and

certain portions claimed by the State under the 500,000 acre grant: that executive officers of the U. S. claim that no title to said lands certified under said joint resolution passed to the State thereunder until certified on the 14th of June, 1866; and also claim that the said lands certified to the State under the act of May 15, 1856, and those claimed by the State under the 500,000 acre grant not having been certified under said joint resolution, never passed to the State, and that the same now constituted part of the public domain of the United States, or belong to the State under the 500.000-acre grant; that afterwards, and some time in the year 1866, without the knowledge or assent of
5 plaintiff or other owners of said land, the State of Iowa, by its agent duly appointed, and the Commissioner of the General Land Office and the Secretary of the Interior assumed to adjust the several grants of land by the general government to the State, and undertook and assumed to give and certify to the State under said joint resolution, for and in lieu of those belonging to bona fide purchasers thereunder, and which had been so certified to the State for railroad purposes, other lands by way of indemnity, first deducting from such indemnity about 12,000 acres claimed by the State as part of the 500,000 acre grant, all of said acts and doings tending to embarrass and complicate the title of plaintiff and the other owners of said lands; and since the decision of the Supreme Court of the U. S. in the case of Wolcott vs. De Moine Navigation & Railroad Co., holding that said lands were reserved under said grant of Aug. 8, 1846, and did not pass to the State under said act of May 15, 1856, nor had they ever passed to the State except under act of Aug. 8, 1846. The Commissioner of the General Land Office and the Secretary of the Interior, having charge of the public lands of the U. S., have assumed to place and rank the said lands among and as a part of the public domain, except the 12,000 acres claimed by the State under the 500,000 acre grant, and they now claim that the said lands of plaintiff and the other owners, whom he represents, lying in the county of Hamilton, belong to the public domain of the U. S., and that the same are subject to pre-emption and homestead entry under the laws of the U. S., and the register and receiver of the U. S. land office of the district, under the direction of said officers, are permitting pre-emption and homestead entries upon said lands; and the State claims the said 12,000 acres as part of the 500,000 acre tract, and the right to sell and dispose of same.

All of which acts and proceedings tend to involve and embarrass
6 the title of plaintiff and the other owners, and to render it unsafe for them to pay the large amount of taxes assessed thereon, with the accruing interest.

11. That, notwithstanding the said lands so certified to the State for railroad purposes, under act of May 15, 1856, are claimed by the U. S. and its officers having charge of the public land as part of the public domain, and by the State of Iowa as school lands as aforesaid; and notwithstanding that the officers of the U. S. claim that the title of the U. S. to the lands certified to the State as passing to the State under joint resolution of March 2, 1861, remained and continued in the U. S. until said certificate of June 14, 1866; and notwithstanding portions of said lands are claimed by the U. S. as part of the public domain, and the balance by the State as school lands, and as therefore not subject to but exempt from taxation for State, county, and other purposes, yet said county of Hamilton since 1859, inclusive, have yearly taxed said lands of plaintiff, and that the aggregate amount assessed on said lands since 1859, with interest at the rate fixed by law, reaches about $2,075.

12. That the said taxes so assessed as claimed by the agents of the

U. S. were levied and assessed on said lands while they were the property of the U. S. or State, and exempt from taxation; that the same creates a cloud upon plaintiff's title; that said lands are of the value of $20,000; that the said county of Hamilton, and Bennett, treasurer, demand and insist on payment of all said taxes, with the interest accruing thereon, and claim the right to collect the same by sales of said lands, and purpose to sell the same unless prevented by injunction.

13. That about May 15, 1856, Congress passed the act granting lands to the State for railroad purposes; that the company organized to construct a railroad from Dubuque to a point on the Missouri River under said act, was called and known as the Dubuque & Pacific, or Dubuque & Sioux City Railroad; and that said company and the Cedar
7 Rapids & Missouri River Railroad Co. and their grantees have, since 1859 or 1860, claimed title to above described lands of plaintiff, except those claimed by State as school lands, down to and until the recent decision of the U. S. Supreme Court in case of Wolcott above cited in April, 1867; and that since said railroad companies and the State of Iowa laid claims to said lands, the title to said lands has been involved in doubt and uncertainty, and been in litigation, the issue and result of which has been uncertain and problematical; that said railroad companies, and the State of Iowa, since they asserted title to said lands as aforesaid, have assumed to control, sell, and dispose of said lands lying within their limits as their own property, and have contracted and conveyed portions thereof to purchasers; that by reason of the doubt and uncertainty resting upon the title and attending the litigation, and the control assumed by the said claimants over said lands, the plaintiff, until the recent decision in Wolcott case, has been unable to sell or lease said lands, and has been deprived of the use, occupation and enjoyment of the same, and realized no profit therefrom.

14. That plaintiff has been greatly hindered, embarrassed and delayed in settling the title and asserting his possession of said lands by the action of the agents of the U. S. and the State; that in April, 1863, after the passage of said joint resolution of March 2, 1861, and said act of July 12, 1862, the Commissioner of the General Land Office certified to the State all the said lands lying within the limits of said railroad, except those claimed by the State as school lands, as passing to said State under act of May 15, 1855, thereby strengthening and tending to confirm the alleged title of said railroad companies.

15. That the claim of the State and said railroad companies, and the legislation concerning the title to said lands, and the doubt entertained as to the issue of same, and the difficulty in restraining waste and
8 punishing trespassers on said lands, operated as license to trespassers; and numbers of persons entered upon said lands and wrongfully, under pretended license from said railroad companies, or otherwise, cut, carried away and converted large quantities of valuable timber and wood growing thereon, greatly injuring and depreciating the value of said lands.

16. That by reason of the matters aforesaid not only have said lands depreciated in value, but plaintiff has been prevented from selling, using and enjoying the same.

17. That prior to the decision of the Supreme Court in Litchfield vs. Dubuque & Pacific Railroad Co. in 1859 or 1860, believing his title to said lands to be valid and perfect, he and other owners paid the taxes assessed on their respective lands for one year, and in part for another year—that the doubt cast upon their title by said decision caused them to suspend further payment of taxes. That after said decision of the

Supreme Court, the auditor of the State of Iowa and district attorney, in view of uncertainty about the title, advised county authorities to suspend and omit the collection of taxes levied on said lands, upon which the county acted and suspended the collection of said taxes; that plaintiff at all times has been ready to pay the taxes assessed on his said lands to save the accumulating interest and penalties when he could do so with safety to his rights and with an assurance that his title would not be disturbed or held invalid, but the great uncertainty created by said decision of the Supreme Court and by claims of said railroad companies, and the action of the Commissioner of the General Land Office in certifying said lands to the State for railroad purposes, and the other matters aforesaid, have operated to deter and delay the payment of the taxes assessed on said lands until interest to the amount of $12,000 has accrued upon same.

18. That notwithstanding plaintiff has been utterly deprived of
9 the use of said lands, and the ability to sell the same, and their depreciation in value by reason of the matters aforesaid, he has been and is now willing to pay such portions of said taxes as shall be just and reasonable and equitable under all the circumstances; that for the purpose of effecting a reasonable settlement and adjustment of said taxes and the interest thereon, John Browne, of Polk County, plaintiff's agent, under plaintiff's direction, before the September session of the board of supervisors in the year 1867, applied to the chairman of said board and requested him to bring the matter before the board for action at its said September session, and then offered to said chairman to pay such amount and portion of said taxes as should be reasonable and just under the circumstances, and offered to pay all the taxes assessed on said lands since 1862, with interest at six per cent., if said board would remit and release the taxes thereon prior to that period, and desired the chairman to present this proposition to the board; that the chairman of the board acknowledged the justice of plaintiff's claim and offer, and agreed to call attention of the board to the same; that plaintiff's attorney and the chairman of said board did bring the matter before the board and submit said proposition of plaintiff to said board; that the board refused to accept plaintiff's proposition, and laid same upon the table, and neglected and refused to take action on the matter or to release any portion of said taxes or interest for the reason among others that said board had no authority under the law so to do.

19. That in addition to plaintiff's lands, above described, as covered by the joint resolution of March 2, 1861, the land described in schedule A to original petition, and lying in said county of Hamilton, and owned by the De Moine Navigation Co. and its grantees, except the land above described as belonging to plaintiff; that all of said lands are covered
by joint resolution of March 2; that there are several grantees
10 of said company owning separate tracts and parcels of said land; that they all hold title by same tenure, and by the same claim and chain as plaintiff; that said owners have all suffered the same embarrassments and inconveniences as plaintiff with regard to their title, and been in like manner deprived of using, selling, and improving said lands, and in all respects stand upon the same footing, and are respectively entitled to the same remedies as plaintiff; and their lands, like those of plaintiff, are liable to be sold for taxes, and are in like manner clouded and encumbered; and that the taxes assessed on lands owned by said company and its grantees, above referred to, with the accruing interest, amount to about $8,700; that the question involved is one of common and general interest to plaintiff and to said company and its

grantees; that it is impracticable to make all interested parties, and plaintiff brings this action for the benefit of all.

20. That notwithstanding the title of plaintiff and of said De Moine Navigation Co. and its other grantees aforesaid, who own and hold said lands as bona fide purchasers under said joint resolution of March 2, 1861, is now valid and perfect, yet the said owners of the said lands are greatly embarrassed, disturbed, obstructed and hindered in the ownership and possession of said lands by the action and conduct and proceedings of the Commissioner of the General Land Office; that the said Commissioner, notwithstanding the title of said railroad companies to said lands, certified to the State of Iowa for railroad purposes as aforesaid, has been declared invalid by the Supreme Court of the United States, refuses to cancel or recall the said certificates passing the said lands to the State for railroad purposes, and refuses to certify said lands to the State for purchasers under joint resolution of March 2, 1861, but is permitting and allowing pre-emption and homestead entries on said lands, claiming and exercising ownership over the same as part of the public domain.

11 21. That the said county of Hamilton and its agents did not yearly after the taxes on the said lands for different years became delinquent, offer and advertise same for sale; that by reason of such omission and neglect the plaintiff claims and insists that no more than six per cent. interest is collectable thereon; that the said county and its agents assessed many of the said tracts in said county as against unknown owners in 80-acre tracts, and that their acts and proceedings were in other respects erroneous, irregular, and defective, and do not confer on the county authority to sell said lands for the taxes.

22. That plaintiff and those he represents are remediless at law, and that district court of Hamilton county is not now in session.

Prayer.

1. That defendants be restrained from advertising and selling the said lands until the final hearing hereof.
2. That on final hearing defendants be perpetually enjoined from selling said lands for said taxes and interest.
3. That the board of supervisors of said county be authorized, required and directed to remit such portions of the said taxes and interest as shall be fair and just and equitable under the circumstances.
4. That plaintiff may have general relief.

On the day of , A. D. 186 , the defendant filed his answer to the said amended petition, setting up the following defense and admitting and alleging as follows:

COUNT I.

1. Admits plaintiff's title to land.
2. Admits the legislation of Congress, the patents from the State, and the certification of lands as set out in original petition.

COUNT II.

1. Denies that the title to the lands remained in United States or State of Iowa for any of the years complained of. Denies that the lands were not subject to taxation for the years complained of.

12 2. Denies that defendants were proceeding illegally to sell the lands in question.

3. Denies that the lands were improperly assessed or levied for taxation, and denies that they were not duly and properly advertised.

4. Denies sufficient knowledge or information to form a belief as to the alleged embarrassments of plaintiff, and his inability to use and dispose of his lands.

COUNT III.

Avers that plaintiffs are bona fide purchasers under and through the De Moine Navigation and Railroad Co., which was a bona fide purchaser from the State of Iowa within the meaning of the acts of Congress and the revenue laws of the State of Iowa, by patent from the State in 1858; that the title was subsequently confirmed by act of Congress of November (March), 1861, which title has never failed; that plaintiff claims now and heretofore the said lands under the said patents, dated in 1858, and that said lands were taxable under the State law for 1859, and all subsequent years; that the taxes were legally assessed, and all of defendants' proceedings have been regular; that the taxes were delinquent, and thus became liable to sale, and that all the acts of defendants in the premises were legal and warranted.

And on the 29th day of November, A. D. 1869, plaintiff filed his supplemental petition, which avers as follows, viz:

1. That the treasurer of Hamilton County has no legal authority to collect the taxes assessed on said lands, for the reason that he never had any legal or valid warrant authorizing him so to do, and no authority to advertise and sell the same for delinquent taxes.

2. That no proper warrant was annexed to the tax-list, as by statute required, authorizing the treasurer to collect the taxes.

3. That about June, 1860, the State auditor directed, ordered,
13 and instructed the treasurer of Hamilton County to withhold and suspend from sale, and from offer to sell, the said lands for the said taxes assessed thereon prior to that date, and to withdraw them from sale; that in accordance with said instructions the county did withdraw said lands from sale; that such instructions are still in force.

(Prayer is in amended petition.)

That afterwards and on or about the day of , A. D. 1869, by stipulation of the plaintiff duly filed, the allegations contained in said supplemental petition were to be deemed and treated as denied.

And afte'wards, at the November term of this court, in the year 1872, this cause came on for hearing and trial before the court, without a jury, upon the pleadings and proofs; that the evidence upon which the case was heard and submitted is contained in the stipulations of the attorneys, hereinafter set forth, and the depositions of witnesses, of which the following is a full abstract:

SAMUEL A. AYRES testified:

1. I am deputy auditor.
2. I know the defendant. Do not know plaintiff.
3. In 1860 I was clerk for J. G. Weeks.
4. In 1860 J. W. Cattell was auditor of State.

5. As such auditor, he kept a book, in which he copied his official letters. The book is now in my posession.

6. I got the letter-book from the auditor this day.

7. I am acquainted with the handwriting of J. W. Cattell.

8. The letter-book contains a copy of what purports to be a letter from Cattell, auditor, to Shepp, treasurer of Hamilton County, Iowa. It is in the handwriting of J. W. Cattell.

9. I here produce a copy of said letter as follows:

14 EXHIBIT A.

AUDITOR'S OFFICE, IOWA,
Des Moines, June 14, 1860.

GEO. SHEPP, Esq., *Treas. Hamilton Co.:*

DEAR SIR: Yours of 9th inst. is received. After looking over the law and the questions propounded, and consulting Attorney-General Rice, we conclude that it would be setting a bad precedent not to offer the town property at the tax sales, and that being assessed as town lots, it would not be proper or safe to sell as land by sub-divisions. This could not be done at any rate when the tax had been paid on any lots in a parcel or description. Hence it is better to sell as town property, but they should be described in as short a manner as possible to be explicit. It would be entirely right to include all unpaid lots in any one block in one description, belonging to one person, or if owner be unknown.

We conclude in view of the question to the so-called River Lands, and the further question as to their being liable to tax, that it would be best not to offer them for sale for the taxes until these matters are determined or adjusted in some manner. There are two questions in regard to them: Firstly, has the State any title to them under the river grant, which it is reported has been decided in the negative, but of which we have no official information. 2d, whether they are taxable prior to 1859, as the property of the river company or their grantees.

This last question I thought had been decided by our courts, but learn from Attorney-General Rice that there is some doubt about it. Upon the whole, it is thought best not to sell them at present, lest it may lead to unnecessary trouble and expense.

Yours truly,
(Signed) J. W. CATTELL,
Auditor of State.

10. I have been deputy auditor about five years.

15 J. W. CATTELL testified:

1. I am in the insurance and real estate business.

2. I was State auditor during the year 1860.

3. As auditor I kept a letter book to make copies of official letters.

4. The book shown me is the letter-book kept by me as such auditor in 1860.

5. The copy of letter found on pages 516 and 517 is that of a letter written by me as auditor to Geo. Shepp, treasurer of Hamilton County, on the 14th of June, 1860.

6. I have no reason to doubt that the original letter was mailed to Shepp on the day it was written.

JOHN BROWNE testified:

1. I am a land agent.

2. I know the parties.

3. About 12,800 acres of the lands described in the petition are claimed by the State as school lands. In the settlement between the State and the United States, relating to the Des Moines River grant, these lands are included, and charged to the State as school lands. The State has issued patents to persons who purchased from John Tolman, school fund commissioner of Webster County, for portions of said land; and the State now claims the balance of said 12,800 acres. And the register of the State land-office claims the right to sell and patent the same as school lands.

4. The Secretary of the Interior and the Commissioner of the General Land Office, since about the year 1862, have claimed the Des Moines River lands as railroad lands, and certified and approved them to the State as such in 1863.

He has also treated such of said lands as were occupied by actual settlers prior to the location of the railroad grants as subject to pre-emption and homestead entries, and has granted and issued certificates of entry and patents to sundry settlers for tracts claimed by them amounting to many thousand acres.

16 In May, 1868, the Secretary of the Interior made a ruling, claiming and appropriating 204,000 acres of these lands claimed by the De Moine Navigation and Railroad Company, and its grantees. And in May, June, and July, 1868, nearly the whole of the 204,000 acres were entered upon by settlers, and declaratory statements filed by land officers at Fort Dodge and Des Moines. Nearly all the lands located in Hamilton County have been so settled upon.

5. In September, , , I went to Webster City, and saw the chairman of the board of supervisors of Hamilton County, and proposed to settle all unpaid taxes for 1862, 1863, 1864, 1865, 1866, and 1867, with six per cent. interest per annum. The board rejected the proposition. Subsequently, I offered through W. J. Covil, esq., to increase the rate of interest to ten per cent., which was refused, and at the October session, 1869, I personally offered to pay all the taxes assessed and unpaid against the river lands, from 1859 to 1868, inclusive, with six per cent. interest per year. This was rejected.

6. From November, 1860, to fall of 1867, Litchfield and other owners were unable to sell any of said lands. Settlers have had the use and enjoyment of the greater portion of them, and these settlers and others have cut down and removed nearly all the valuable timber, stripping many tracts and leaving only brush and stumps.

The railroad company, since the certificate of these lands as railroad lands, have sold many tracts and received payment therefor. The railroad companies have also, by their agents and contractors, and by paying the settlers a nominal value, cut and removed many thousands of ties and much valuable framing timber.

Before claim of title by the State and United States and railroad companies, these timber lands were in good condition and valuable, but now they are nearly worthless.

17 CYRUS C. CARPENTER testified:

1. I am register of the State land office of the State of Iowa.

2. I know Hamilton County; I know none of the other parties.

3. I am register of the State land office, and as such connected with the office.

4. The records of said State land office show what lands in Hamilton County were certified and approved to the State of Iowa under the act of August 8, 1846, and contains a list of such lands.

5. I have examined the lists in said office and find that a portion of said lands are claimed by the State of Iowa as school lands under the 500,000-acre grant.

6. The following portions of said lands are claimed by the State of Iowa. (Here follows a description, containing in the aggregate 3,653 22-100 acres.) Of such lands there have been conveyed by the State of Iowa 460 28-100 acres. The State has claimed the title to the above described lands since July, 1850, by reason of the selection of the same by its agent (as school lands) by receiving and accepting the certificate of the Secretary of the Interior, dated February 20, 1851, by the ordering thereof into the market by the State on the 6th of June, 1853, and by an adjustment by the Secretary of the Interior with Josiah A. Harvey, commissioner on part of the State, made May 23, 1866, as stated on pages 23-4-5 and 6 of register of State land office of date of November 12, 1867, annexed.

7. Of said lands certified to the State of Iowa under act of August 8, 1846, which lie in the county of Hamilton, I find upon examination that 1,708 06-100 acres have been contracted by authority of the State by John Tolman, school fund commissioner.

8. Of the real property mentioned in my answer to 6th interrogatory there has been sold and conveyed by the State of Iowa the following:

18 West ½ of S. E. ¼ of sec. 15, twp. 87, R. 26 W.; and north ½ of N. W. ¼ of sec. 23, twp. 87, R. 26 W.
Sold October 15, 1869.
The N. W. ¼ of the N. E. ¼ of sec. 21, twp. 87, R. 26 W.
October 15, 1869.
The S. W. of N. W. of sec. 21, twp. 87, R. 26 W.
October 15, 1869.
North W. of N. W. of sec. 21, twp. 87, R. 26 W.
October 15, 1869.
S. W. of N. E. ¼ of sec. 21, twp. 87, R. 26 W.
October 15, 1869.
S. W. ¼ of sec. 7, twp. 87, N. of R. 26 W.
October 28, 1869.
The deeds of the State bearing date respectively with the sale of each parcel above described.

CHARLES B. RICHARDS testified:

1. I am a banker.

2. I was register of United States land office at Fort Dodge from 1861 to 1869.

3. Since 1861, under instruction from the Commissioner of the General Land Office, as such register, I allowed pre-emptions and homestead entries to be made on the odd numbered sections within five miles of the Des Moines River, known as river lands.

4. Said lands have by the Land Department at Washington been treated as public lands whenever they were occupied prior to May 15, 1856, within the limits of Dubuque & Sioux City Railroad grant, and lands outside of said limits have been treated as public lands by the department up to the present time.

5. All the lands within the fifteen mile limit (river lands) of Dubuque & Sioux City Railroad within five miles of the Des Moines River on each side since 1860, and up to time of decision in Wolcott case, have by the department been treated as railroad lands.

19 6. The so-called river lands in Hamilton County lying within the six and fifteen mile limits of said railroad line were certified to the State of Iowa as railroad lands, April 7, 1863.

THOMAS SARGENT testified:

1. I am a land agent.
2. I am agent of the Iowa Homestead Co., and have been since 1864.
3. The Iowa Homestead Co. claim of the "river lands" in Hamilton County, 1,524 acres.
4. I have in my possession a deed from the Dubuque & Sioux City Railroad Co. to Geo. J. Forest, Fred. C. Gebhard, and Wm. J. Barney, trustees of the so-called river lands in Hamilton County, under act of May 15, 1856, and produce the same.

(This is a deed conveying to the persons named the title to the land by the Dubuque & Sioux City Railroad Co.)

5. I have in my possession the deed from Forest and Barney as such trustees to the Iowa Homestead Company for the so-called river lands in Hamilton County, and produce the same.

(This is a deed from Forest and Barney conveying all the river lands in the county to the Iowa Homestead Company.)

6. So far as I know the Dubuque & Sioux City Railroad Co. succeeded to all the rights of the Dubuque & Pacific Railroad Co.

J. M. BELL testified:

1. I am a merchant.
2. George Shepp was treasurer of Hamilton County in 1860 and 1861.
3. During that time I was his deputy.
4. We did receive from the auditor of state instruction as to the legality or propriety of advertising and selling the river lands, so-called, in Hamilton County.

20 5. I have the letter of the auditor of state containing such instructions, dated June 14, 1860, addressed to Geo. Shepp, treasurer of Hamilton County, and now produce same. (Copy annexed.)

6. This letter of the auditor was in reference to inquiries addressed to him by Shepp as treasurer, or myself as deputy, in regard to the matter.
7. I am acquainted with the handwriting of J. W. Cattell.
8. The letter produced, dated June 14, 1860, is in his handwriting, to the best of my knowledge and belief.
9. Geo. Shepp as treasurer, while in office, followed the instructions contained in said letter as far as the same relate to the river lands.
10. I succeeded Geo. Shepp as treasurer of Hamilton County.
11. I was treasurer from January 1, 1862, to June 1, 1865.
12. While I was treasurer I followed the instructions of Shepp, treasurer, contained in the letter of the auditor of June 14, 1860, so far as the same relates to the so-called river lands. There may have been a few pieces advertised by mistake.
13. The river lands in Hamilton County were not regularly advertised for sale by the treasurer for taxes of 1859, 1860, 1861, 1862, and 1863, except a piece might occasionally have been advertised by mistake. It was not the intention to advertise them.

MICHAEL SWENEY testified:

1. I am a real estate agent.

2. I have been clerk of the board of supervisors of Hamilton County, Iowa, from Sept., 1864, to Jan. 1, 1869.

3. While I was such clerk there never was any order issued or directions given particularly by the said board of supervisors for forcing the collection of the delinquent taxes on the river lands (so called) in said county.

21 4. The tax lists for said county for the years while I was such clerk, I have, and the warrants attached to said lists were signed by me as clerk of the board of supervisors.

5. The supervisors of said county for the year 1868 made an order directing the attaching and signing of said warrants to the tax list by me as clerk, but for no other year, to my knowledge, and none is shown by the minutes of their proceedings as I find.

6. The seal of the district court was attached to said warrants with the words as follows: "Seal of the district court of Hamilton County, Iowa," and was so attached at the time of signing such warrants.

7. During my term of office the levy was made for each year at the September meeting of the board.

8. The levy or rate of levy during the year I was in office, as shown by the records, is as follows:

(Here follows statement of rate for different taxes for the years 1864, 1865, 1866, 1867, 1868.)

9. Equalization was made regularly each year while I was clerk.

10. The lands were uniformly assessed in forty acre tracts, except those of residents and those belonging to H. Ten Eyck.

JOHN ECKSTEIN testified:

1. I am treasurer of Hamilton County, Iowa.

2. The warrant for 1859, on tax-list of that year, is signed by John D. Maxwell, county judge, with the seal of Hamilton County, Iowa, attached. The warrant to tax-list for 1860 was signed by H. Corbin, county judge, and the seal of Hamilton County attached. The warrant to tax-list for 1861 was signed by Julius M. Jones, clerk, and no seal is attached. The tax-list for 1862 has no warrant or seal. The warrant to tax-list for 1863 was signed by Julius M. Jones, clerk, and no seal is attached. The warrant to the tax-list for 1864 is signed by M.

22 Sweney, clerk, and no seal is attached. The warrant to tax-list for 1865 is signed by M. Sweney, clerk, and no seal is attached. The warrant to tax-list for 1866 is signed by M. Sweney, clerk of the board of supervisors of Hamilton County, and the seal of the district court attached. The warrant to the tax-list for 1867 is signed by M. Sweney, clerk, and the seal of the district court attached. The warrant to the tax-list of 1868 is signed by M. Sweney, clerk of the board of supervisors, and the seal of the district court is attached.

3. The design, device, and words upon said attached warrants, which I have described as the seal of the district court, is "Seal of the district court of Hamilton County, Iowa."

4. An accurate description of the river lands, so called, in Hamilton County, is hereto annexed, with the delinquent taxes therein, as shown by my books.

(List annexed.)

ISAIAH DONNE testified:

1. I am county auditor of Hamilton County, Iowa.

2. The warrant to tax-lists was attached *is* 1859 and 1860 by order of the county judge then in office. Since that time no order or direction has been given by the board of supervisors to the clerk to attach a warrant of any kind, until the October meeting, 1869, when such order was made.

3. Mr. Browne made a proposition to the board, in relation to the taxes on the river lands, at the meeting in October, 1869, and the same was rejected by the board.

That the following are copies of the stipulations respecting or relating to the evidence, and the same were read and used as evidence on the trial, and for the sake of identifying them, they are numbered as stipulations 1, 2, 3, 4, 5, 6, and 7.

23 *Stipulation No.* 1.

District court of Hamilton County, October term, 1869.

EDWIN C. LITCHFIELD
vs.
THE COUNTY OF HAMILTON, AND HIRAM BENNETT, treasurer of said county.

It is hereby stipulated and agreed that this action be marked submitted as of this term of court; that the parties may have ninety days from the close of this term to take their respective proofs herein; that after the expiration of the time above allowed for taking proofs, the cause be considered in the hands of the court for decision, who shall render decision at the next term of court. And it is further stipulated that the documentary evidence required to be taken by either party may be put in evidence by the production of the original books, papers, etc., documents or copies thereof certified by the officers having the custody thereof.

And it is further stipulated that at any time up to the 1st of December, the plaintiff may file a supplemental petition, setting out in due form two allegations, to be regarded and treated as part of the annexed petition herein, viz:

1. That no legal or proper warrants for the collection of the taxes in dispute herein was ever issued by or under the direction of the board of supervisors, or by the county judge, to the treasurer, as by law required.

2. That the State officers, or some of them, about the year 1860, advised and instructed the officers of Hamilton County having charge of the collection of taxes that in view of the uncertainty in regard to the title to the land on which the said taxes are levied and assessed, it would be improper and unsafe to collect the said taxes, and that,

24 acting under such order and instruction of the State officers, they omitted to advertise the said lands for said taxes, and declined and refused to receive payment of said taxes.

J. M. ELLWOOD,
Solicitor for Plaintiff.
J. H. BRADLEY,
Attorney for County.

Filed October 20, 1869.

Stipulation No. 2.

District court of Hamilton County, Iowa.

EDWIN C. LITCHFIELD
vs.
THE COUNTY OF HAMILTON, AND HIRAM BENNETT, treasurer of said county.

The plaintiff, for the purposes of this trial, admits that the board of supervisors of Hamilton County had no separate and distinctive seal until the first of January, 1869; that prior to that date the board or the clerk thereof used and attached to all warrants annexed to the tax-list the seal of the clerk of the district court of said county, and said board had or used no other seal than the seal of the clerk of the district court of said county.

J. M. ELLWOOD,
Solicitor for Plaintiff.

Filed October 21, 1870.

25 *Stipulation No. 3.*

District court of Webster County.

EDWIN C. LITCHFIELD
vs.
THE COUNTY OF HAMILTON, AND HIRAM BENNETT, treasurer of said county.

To save the encumbering of the record in this case with vol'minous proof, it is hereby stipulated and agreed by and between the respective parties that the statements following be admitted as true for the purposes of this trial, without proof:

First. That the lands in the petition described and referred to, and to restrain the collection of taxes upon which this action was commenced, were not advertised for sale for delinquent taxes by the treasurer of said county of Hamilton in either of the years 1860, 1861, 1862, 1863, or 1864.

Second. That in 1865 the treasurer of said county of Hamilton, as appears by his advertised lists, advertised the lands above referred to for sale for delinquent taxes for the year 1864 only.

Third. That the treasurer of said county, in the year 1866, as appears by his advertised lists, advertised the said lands for sale for the delinquent taxes of 1865 and all previous years.

Fourth. That the treasurer of said county, in the year 1867, as appears by his advertised lists for said year, advertised the said lands for sale for the delinquent taxes of 1866 only.

Fifth. That the treasurer of said county, in the year 1868, as appears by the advertised lists for said year, advertised said lands for sale for the delinquent taxes of 1867 only.

26 Sixth. That the treasurer of said county, in the year 1869, as appears by the advertised lists for said year, advertised the said lands for sale for the delinquent taxes of 1868 only.

Seventh. That the said lands were not sold for the delinquent taxes of 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, or either of said years, pursuant to the treasurer's advertisement and notice of sale,

for the reason that the persons attending the sales for said years declined to purchase the said lands for said taxes, and there were no bidders for the same.

Eighth. That the said plaintiff paid or caused to be paid the taxes assessed on his lands in petition described for the year 1858.

October 20, 1870.

J. H. BRADLEY,
Attorney for Defendant.

Filed October 21, 1870.

Stipulation No. 4.

District court of Hamilton County, Iowa, October term, 1870.

EDWIN C. LITCHFIELD
vs.
THE COUNTY OF HAMILTON, AND HIRAM BENNETT, treasurer of said county.

It is hereby stipulated by the respective parties that this action may be marked as submitted at this term of this court.

It is also stipulated and agreed that the same shall be argued upon written arguments, to be furnished to the judge; and that the
27 plaintiff's attorney shall have sixty days from this date to prepare his argument; that when prepared he shall transmit the papers in this action to the attorney for the defendants, at Marshalltown, together with the argument prepared by him; and the attorney for defendants shall have sixty days thereafter to prepare his argument in reply to the plaintiff's argument, and shall then forward the papers in the case to the clerk of this court, with the arguments of both parties; and the court shall decide the case in season for decree to be entered at the next term of this court.

And it is further stipulated and agreed that at any time before the time expires for filing the arguments of the parties as herein stipulated, either party may procure and file with the clerk as evidence hereinunder the proper certificates of any of the officers of the said county of Hamilton; certified copies of any parts or portions of the records of said county in the custody of such officers respectively, bearing upon and pertinent to the controversy in this action; and also the certificates of such officers showing any errors or omissions on the part of any of the county officers of said county of Hamilton, as appears from the records in the custody of said officers, in the levy, assessment, or advertising the lands the tax upon which is sought to be rest'ained in this action.

And it is further stipulated and agreed that the supplemental petition filed by plaintiff herein November 29, 1869, shall, on the trial and hearing of this action, be deemed denied in all respects as fully as the same could be denied by answer duly filed.

J. M. ELLWOOD,
Solicitor for Plaintiff.
J. H. BRADLEY,
Attorney for Plaintiff.

October 21, 1870.

28 *Stipulation No. 5, with clerk's certificate.*

Orders of classification of real estate, as made by the board of supervisors of Hamilton County, Iowa, for the years 1861, 1863, 1865, 1867, 1869, and 1871.

First. For the year 1861, no order was made.

Second. January 7, 1863. It was ordered by the board of supervisors of said county that the several descriptions of the property *to* be classified as follows, to wit:

First grade, of timber and well improved farms, $5.00 per acre.

Second grade, timber and prairie land, with common ordinary improvements, within two miles of timber, $3.00 per acre.

Third grade, prairie land, $2.00 per acre.

Third. January 5, 1865. It was ordered by the board of supervisors of Hamilton County, Iowa, that the assessment of real estate be classified as follows:

First grade, improved land and timber land, $10.00 per acre.

Second grade, common ordinary improvements, $5.00 per acre.

First grade, unimproved land near timber, $4.00 per acre.

Second grade, prairie land, $2.00 per acre.

Fourth. Classification of real estate for 1867, made by the board of supervisors of Hamilton County, Iowa, January 10, 1867:

First class, improved farms and timber lands, within two miles of Webster City, per acre, $15.00.

Second class, improved farms and timber lands, within two miles of Webster City, per acre, $12.00.

First class, improved farms and timber lands outside of two miles from Webster City, $8.00.

Second class, improved farms and common ordinary improvements, including prairie farms, per acre, $5.00.

29 Third class, prairie lands within two miles of timber, per acre, $4.00.

Fourth class, prairie lands outside of two miles from timber, $2.50.

Fifth. Classification of real estate for the year A. D. 1869:

First class, improved farms and timber lands within two miles of Webster City, per acre, $15.00.

Second class, improved farms and timber lands within two miles of Webster City, per acre, $12.00.

First class, farms and timber lands outside of the two-mile limits, $5.00 to $10.00 per acre.

All other prairie, $3.00 to $4.00 per acre.

Sixth. Classification of real estate for the year 1871:

First class, improved farms and timber lands within two miles of Webster City, per acre, $15.00; adding thereto a reasonable amount for valuable buildings.

Second class, farms and timber lands outside the two-mile limits, $5.00 to $10.00 per acre; adding thereto a reasonable amount for valuable buildings.

Third class, all other lands, $3.00 to $4.00 per acre.

STATE OF IOWA,
Hamilton County, ss:

I, Isaiah Doane, county auditor and clerk of the board of supervisors of said county, do hereby certify that the above and foregoing is a correct transcript of the several orders of the board of supervisors of said

county for the years A. D. 1861, A. D. 1863, A. D. 1865, A. D. 1867, A. D. 1869, and A. D. 1871, for the direction of the assessors in making the assessment of real estate in said county, for said years, as the same appears of record in the minute books of said board of supervisors.

Witness my hand and the seal of said county, hereto affixed, this 8th day of May, A. D. 1871.

[SEAL.] ISAIAH DOANE,
County Auditor and Clerk of the Board of Supervisors.

30 *Stipulation No. 5 to clerk's certificate.*

LITCHFIELD
vs.
HAMILTON COUNTY, AND BENNETT, TREASURER.

It is hereby stipulated and agreed that the foregoing papers and resolutions of the board of supervisors, copied by the clerk of said board, may be filed by the clerk, and read in evidence on the hearing and trial of this action by the plaintiff.

May 15, 1871.

J. H. BRADLEY,
For Defendant.

Stipulation No. 6.

District court of Hamilton County, Iowa.

EDWIN C. LITCHFIELD
vs.
THE COUNTY OF HAMILTON, AND HIRAM BENNETT, treasurer of said county.

For the purposes of this trial, the defendants stipulate the fact to be that all the causes in the annexed list entitled, numbered from one to twenty-seven inclusive, were commenced in the district court of Hamilton County, Iowa, to recover possession and quiet title to lands in said county known as De Moine River lands; that all of said actions are still pending and undetermined, except No. 17, Ten Eyck vs. Hamson, which has been tried and disposed of, and that the plaintiffs
31 in all such actions claim title from the De Moine Navigation and Railroad Company, to whom the lands were patented by the State of Iowa; that about sixteen or seventeen of said actions were commenced in 1868, and the balance in 1871.

JNO. H. BRADLEY,
For Defendant.

Except causes as to number, I have not examined.

1.

DE MOINE NAVIGATION & RAILROAD CO.
vs.
WM. ROYSTON.

To recover possession of NE. ¼ of NE. ¼ of sec. 15, twp. 87, R. 26.

2.

DE MOINE NAVIGATION & RAILROAD CO.
vs.
PERLEY CLABAUGH.

To recover possession of NW. ¼ of NE. ¼ of sec. 15, twp. 87, R. 26.

3.

JOHN STRYKER
vs.
ROSCOE ROYSTON.

To recover possession of N. ½ of SE. ¼, sec. 9, twp. 87, R. 26.

4.

EDWIN C. LITCHFIELD
vs.
JOSHUA CORBIN.

To recover possession of NE. ¼ of NW. ¼ of sec. 17, twp. 87, R. 26.

5.

EDWIN C. LITCHFIELD
vs.
JOSEPH PIERCE.

To recover possession of NW. ¼ of NE. ¼ of sec. 19, twp. 87, R. 26.

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6.

EDWIN C. LITCHFIELD
vs.
NOAH RECTOR.

To recover possession of N. ½ of NE. ¼ and E. ½ of *NS.* ¼ of sec. 19, twp. 87, R. 26.

7.

EDWIN C. LITCHFIELD
vs.
WM. MEADE.

To recover possession of SE. ¼ of NW. ¼ and NE. ¼ of NW. ¼ of sec. 17, twp. 87, R. 26.

8.

EDWIN C. LITCHFIELD
vs.
L. L. TOMLIN.

To recover possession of W. ½ of NW. ¼ of sec. 19, twp. 87, R. 23.

9.

EDWIN C. LITCHFIELD
vs.
ARCHIBALD POOLEY.

To recover possession of S. ½ of NE. ¼ of sec. 19, twp. 87, R. 26.

10.

WILLIAM BAKER
vs.
HENRY FISHER.

To recover possession of NW. ¼ of sec. 23, twp. 87, R. 26.

11.

JOHN STRYKER
vs.
GEO. NEVEN.

To set aside patent to SE. ¼ of sec. 21, twp. 87, R. 26.

33

12.

JOHN STRYKER
vs.
WASHINGTON NEVEN.

To set aside patent to N. ½ of SW. ¼ and SW. ¼ of SW. ¼ of sec. 21, twp. 87, R. 26.

13.

EDWIN C. LITCHFIELD
vs.
JOHN PAGE.

To set aside deed to defendant by claimant to W. ½ of SE. ¼ of sec. 19, twp. 87, R. 26.

14.

EDWIN C. LITCHFIELD
vs.
JOHN B. SKINNER AND HAYDEN WHITNEY.

To set aside deed from another claimant to NW. ¼ of SW. ¼ of sec. 19, twp. 87, R. 26.

15.

DE MOINE NAVIGATION & RAILROAD CO.
vs.
GEORGE STOVER.

To set aside patent to SW. ¼ of sec. 9, twp. 87, R. 26.

16.

DE MOINE NAVIGATION & RAILROAD CO.
vs.
MILTON FISHER.

To set aside patent and pre-emption certificate to SW. ¼ of sec. 15, twp. 87, R. 26.

17.

HENRY TEN EYCK
vs.
ERICK HANSON.

To recover possession of 160 acres in Hamilton County, Iowa.

34

18.

EDWIN C. LITCHFIELD
vs.
LUTHER HAYDEN, SNELL & BUTTERWORTH, and W. N. Meservey.

To quiet title to E. ½, SE., sec. 19, twp. 87, R. 26.

19.

EDWIN C. LITCHFIELD
vs.
MATTHIAS ANCHER.

For possession of W. ½, SW., sec. 5, twp. 87, R. 26.

20.

SAME PLAINTIFF
vs.
AMANDA BUTTERWORTH, SNELL & BUTTERworth, and W. N. Meservey.

To quiet title to E. ½, SW. and NW. SW., sec. 29, *p*wp. 87, R. 26. No. 231, eq.

21.

EDWIN C. LITCHFIELD
vs.
JOHN PAGE.

For possession of SW. SW., sec. 19, twp. 87, R. 26.

22.

EDWIN C. LITCHFIELD
vs.
JAS. A. SNODGRASS.

For possession of NE. NW., sec. 21, twp. 87, R. 26.

23.

EDWIN C. LITCHFIELD
vs.
ELI S. NEIRSON.

For possession of SE. ¼ of sec. 29, twp. 87, R. 26.

35

24.

EDWIN C. LITCHFIELD
vs.
MORTON ERRICKSON.

For possession of SW. ¼ of sec. 31, twp. 86, R. 26.

25.

DE MOINE NAVIGATION & RAILROAD CO.
vs.
HENRY FISHER, SNELL & BUTTERWORTH, AND W. N. MESERVEY.

To quiet title to SE., sec. 15, twp. 87, R. 26.

26.

SAME PLAINTIFF
vs.
CHAS. FISHER, ELIZABETH FISHER, C. E. Yager, and Wm. Yager.

For possession of west ½ NE. and NE., NW. sec. 15, twp. 87, R. 23.

27.

SAME PLAINTIFF
vs.
JOHN L. SMITH.

For possession of NW., sec. 5, twp. 86, R. 26.

Stipulation No. 7.

District court of Hamilton County, Iowa.

EDWIN C. LITCHFIELD
vs.
THE COUNTY OF HAMILTON, AND HIRAM BENNETT, treasurer of said county.

To save the trouble and expense of taking depositions and procuring proofs, it is stipulated and agreed, that the following statement
36 be admitted and received as evidence on the trial hereof, in and by which the following facts are admitted:

First. That the De Moine Navigation & Railroad Company, in plaintiff's petition named, is a corporation duly created and organized, under the laws of the State, about the month of May, 1854.

Second. That the defendant, the County of Hamilton, is a municipal corporation, created by the laws of this State, and has been in existence as such corporation since about the year 1856, and that the defendant, Hiram Bennett, was the treasurer of said county at the time of the commencement of this action.

Third. That the lands the taxes upon which are sought to be enjoined from collection in this action lie in the said county of Hamilton, within five miles of the Des Moines River, and above the Raccoon Forks or Junction of the Raccoon and Des Moines Rivers, and are included in the lists of lands certified and approved to the State of Iowa, under the act of Congress, approved August 8, 1846, entitled "An act granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory," as in the plaintiff's petition alleged.

Fourth. That on or about the 3d day of May, 1858, the State of Iowa, by deed or patent, duly executed, conveyed all the said lands in petition mentioned and described to the De Moine Navigation & Railroad Company, and that all said lands are now held and owned by said company and its grantees, including the plaintiff and those whom he represents, as stated in petition.

Fifth. That after such conveyance to the said De Moine Navigation & Railroad Company, by the State of Iowa, Edwin C. Litchfield, a grantee of said company, of the lands in the petition, claimed to be owned by him, and on or about the year 1858 or 1859, commenced an action in the district court of the United States for the district
37 of Iowa, and against the Dubuque & Pacific Railroad Company, a corporation which claimed the said lands, lying in the odd numbered sections, within five miles of the Des Moines River, and above the Raccoon Forks; that in the said district court a decree was rendered in favor of said Litchfield; that on appeal to the Supreme Court of the United States, the said judgment in favor of said Litchfield was reversed, the said court holding that the grant in the said act of August 8, 1846, contained, was limitted to, and did not extend above the Raccoon Forks, and that such decision was made and rendered on or about the 9th of April, 1860; that a report of the said case is found in 23 Howard's United States Reports, and to which either party hereto, for the purpose of evidence or otherwise, is at liberty to refer.

Sixth. That after such decision in the said case of Litchfield vs. The Dubuque & Pacific Railroad Company, for the purpose of passing to and vesting in the State of Iowa and its grantees the title to said lands, in the odd numbered sections, within five miles of the Des Moines River, and above the Raccoon Forks, which had been certified and approved to said State by the United States, under the said act of August 8th, 1846, the Congress of the United States passed the joint resolution entitled "Joint resolution to quiet title to lands in the State of Iowa," approved March 2, 1861, and also an act entitled "An act confirming a land claim in the State of Iowa, and for other purposes," approved July 12, 1862; to which said resolution and act the parties may refer as evidence or otherwise.

Seventh. That after the passage of said joint resolution of March 2, 1861, and said act of July 12, 1862, one Samuel G. Wolcott commenced an action against the De Moine Navigation & Railroad Company, in the circuit court of the United States for the southern district of New

York, to recover damages against said company, alleging a con-
38 veyance to him by said company of a tract of land lying in an odd numbered section, within five miles of the Des Moines River and above the Raccoon Forks. That by reason of the decision of the Supreme Court, in the Litchfield case, the title of said company had failed, and that said company was liable to him, upon the covenants of seizin in the deeds of said company to him contained. That such action by said Wolcott was commenced about the year 1865, and was decided finally on appeal to the Supreme Court of the United States in the spring of 1867, the Supreme Court holding and deciding that by the said joint resolution of March 2, 1861, and the said act of July 12, 1862, the State of Iowa and its grantees acquired the title to the said lands lying above the Raccoon Forks, and certified and approved to it under the said act of August, 1846, as aforesaid. That said case and decision are reported in 5 Wallace, U. S. Reports, and to which, for the purpose of evidence or otherwise, the parties are at liberty to refer.

Eighth. That after the passage of the joint resolution of March 2, 1861, and on or about the 7th of April, A. D. 1863, all the lands in the petition mentioned and referred to were, by the United States and its duly authorized agents, certified to the State of Iowa, as passing to it for railroad purposes, under the act of May 15, 1856, and to which act reference may be had.

Ninth. That in the year 1866 the agent of the State of Iowa, and the Commissioner of the General Land Office, and Secretary of the Interior, by and with the approval of the census board of said State, under an act of the general assembly, assumed to make an adjustment of the several grants made by the United States to the State, and that a copy of the adjustment so made by the agents of the United States, and the act authorizing the same, are hereto annexed, marked A, and made and to be taken as a part of this statement.

Tenth. That portions of said lands in petition referred to, and
39 the taxes upon which are in controversy in this action, hitherto have been and now are claimed by the State of Iowa as school lands, and as passing and having been certified to the said State as part of the 500,000 acre grant, as in plaintiff's petition stated and alleged.

Eleventh. That since about the year 1862 all the lands lying in the said county of Hamilton, and so certified and approved to the State, under the said act of August 8, 1846, as aforesaid, including those in the petition described, mentioned, and referred to, have, by the officers of the United States having charge and control of the public lands, been claimed and held as part of the public domain of the United States and as public lands, and that said officers, adhering to such claim, have allowed portions of said lands to be pre-empted under the pre-emption laws of the United States, and to be appropriated for homestead purposes under the laws of the United States allowing homestead entries.

Twelfth. That since, and notwithstanding the decision of the Supreme Court, in the case of Wolcott, above referred to, the Iowa Homestead Company, a grantee of the said Dubuque & Pacific Railroad Company, claims and asserts title to all of those lands, in the petition mentioned and referred to, which lie within the six and fifteen mile limits of said Dubuque & Pacific Railroad, under the act of Congress of May 15, 1856, and that the said Iowa Homestead Company, so asserting their title to the said lands under and by virtue of the said act of Congress of May 15, 1856, has commenced an action against the De Moine Navigation & Railroad Company and its grantees, to quiet and confirm their title to said lands; which said action was commenced early in the year 1868,

and is now pending and undetermined in the U. S. circuit court in and for the district of Iowa.

Thirteenth. That the said Dubuque & Pacific Railroad Company, or its successor, the Dubuque & Sioux City Railroad Company, claiming title under the act of Congress, May 15, 1856, has by deed conveyed to the Iowa Homestead Company and other grantees of said railroad company, all, or nearly all, of the said lands in plaintiff's petition mentioned and referred to, and that the said deeds of said company for said lands are still outstanding, uncancelled, and operative.

Fourteenth. That taxes have been assessed and levied on the said lands in petition mentioned and referred to since 1858, and that the said defendants, at the time of the commencement of this action, claimed and now claim and insist upon the right to collect all the delinquent taxes on said lands since 1858, with the full amount of accruing interest thereon, at the rates fixed by the statute of this State; and refuse to deduct or abate any portion of said interest, by reason of the dispute and uncertainty in regard to the title thereto, and the divers claims of title asserted to said lands, and maintain and insist upon the right to advertise and sell said lands, for such delinquent taxes, with the full rate of interest accruing thereon, under the said statutes of this State, and that prior to the injunction herein the said defendants had advertised the said land for sale for such delinquent taxes and interest aforesaid, and would have sold the same had they not been restrained by the injunction herein, and that at the time of the commencement of this action the taxes assessed upon the said lands in petition mentioned and referred to, which the said defendants were proceeding to collect with the interest then accruing and accrued thereon, at the rates allowed by law, amounted to $8,700.00, as in plaintiff's petition stated.

Admitted, except ten and eleven, as not being informed of the facts.

J. H. BRADLEY,
Defendants' Attorney.

Admitted as to all above, including ten and eleven.

J. M. ELLWOOD,
Plaintiff's Attorney.

Filed December 11, 1869.

41 *Exhibit A referred to in ninth paragraph or subdivision of stipulation No. seven* (7).

EXHIBIT A.

On the 30th of March, 1866, the general assembly of the State of Iowa passed an act of which the following is a copy:

An act providing for the adjustment of certain land claims with the general government.

Whereas the excess of land certified to the State over and above the amount it was entitled to receive under the act of Congress of September 4, 1841, known as the 500,000 acre grant, has not been reconveyed nor satisfaction therefor rendered to the general government; and

Whereas the lands falling to the State, under the joint resolution of Congress of March 3d, 1861, entitled "Joint resolutions to quiet titles in the State of Iowa," and under the act of Congress entitled "An act confirming a land claim in the State of Iowa and for other purposes,"

approved July 12th, 1862, have not yet been certified or approved to the State; and

Whereas the claims of the State against the United States, arising under the swamp land-grant, remain to a very great extent in an unsettled and unsatisfactory condition; and

Whereas the interests of the State and her grantees demand a speedy settlement of all said matters: Therefore,

SECTION 1. Be it enacted by the general assembly of the State of Iowa, That Josiah A. Harvey, register of the State land-office, be, and he is hereby, appointed a commissioner on behalf of the State of Iowa to adjust with the general government all the matters and claims aforesaid.

SEC. 2. Said commissioner shall proceed to Washington City, and present said claims to the Department of the Interior, and urge the same to settlement as early and as speedily as may be consistent with the interest of the State, and he is hereby authorized to adjust the said excess of the 500,000 acre grant, by permitting the United States to retain out of the indemnity land falling to the State under said act of Congress of July 12th, 1862, an amount equivalent to such excess: Provided, That nothing herein contained shall be construed to be a relinquishment of the claim of the State under the said 500,000 acre grant to the 12,813 51-100 acres selected as a part of such grant, and subsequently rejected from a supposed conflict with the act of Congress approved August, 1846, known as the Des Moines River grant, and the said commissioner is hereby instructed to secure a restoration of said selections as a part of the 500,000 acre grant, and a confirmation of the title of the State thereto, as a part of such grant.

42 SEC. 3. As soon as the claim or claims, or matters of difference, under any one of said acts, shall be adjusted, said commissioner shall report the same to the census board, setting forth the terms and mode of adjustment, and said board shall examine and pass upon said adjustment so presented, and the approval of a majority of said board shall make the settlement of said matters or claims final and binding upon the State of Iowa. Such approval shall be in writing, signed by the members of said board agreeing thereto, and attested by the great seal of the State of Iowa.

SEC. 4. Said commissioner shall receive as his compensation two dollars per day for the time actually engaged in the discharge of the duties by this act imposed, with his necessary expenses in attending to the same, and his account for such time and expenses made out from time to time, or at the conclusion of his services as such commissioner, and sworn to by him, shall be presented to the census board for allowance, and if approved and allowed by them, the auditor of State shall draw his warrant on the State treasurer, who shall pay the same out of the general revenue of the State.

SEC. 5. The amount of expenses incurred and paid out of the treasury, as provided in the preceding section, in carrying out the provision of this act, shall be approved by the census board, as nearly as practicable, pro rata among the parties receiving, or entitled to receive, the benefits resulting from the adjustment of said several matters with the general government, and the amount thus apportioned shall be paid into the State treasury by such parties respectively before they shall be entitled to receive the proceeds or benefits of such settlement.

SEC. 6. All indemnity scrip received from the general government and all swamp lands patented to the State shall be conveyed to the counties to which they belong, and all money and indemnity scrip received from

the government shall be placed under the control of the board of supervisors of the several counties to which they belong, leaving the counties thereof through their respective boards of supervisors to settle with their grantees.

SEC. 7. This act, being deemed of immediate importance, shall take effect from and after its publication in the Iowa State Register and the Iowa Homestead, newspapers published at Des Moines.

Approved March 30th, 1866.

The following is the report of the acts and adjustment of the said J. A. Harvey, under said act, to the census board of the State of Iowa, and the action of the said census board thereon:

WASHINGTON CITY, *May* 21, 1866.

43 Pursuant to the authority conferred by the act of the State of Iowa, approved March 30, 1866, "for the adjustment of certain land claims with the general government," I, Josiah A. Harvey, register of the State land office, and as commissioner on behalf of the State, do hereby assent to the adjustment as herein stated, the said adjustment to be held as binding and conclusive on the said State as provided in said act.

JOSIAH A. HARVEY,
Register of the State Land Office, and
Commissioner on behalf of the State of Iowa.

WASHINGTON CITY, D. C., *May* 23, 1866.

To the honorable census board of the State of Iowa, Des Moines:

Pursuant to the requirements of chapter 79 of the acts of the 11th general assembly, I have the honor to report that I have consummated an adjustment with the United States, of the excesss of lands received by the State under the grant of September 4, 1841; also the lands confirmed to the State by the joint resolution of March 2d, 1861, and the lands falling to the State under the act of Congress of July 12th, 1862, and transmit herewith for your approval a copy of the agreement containing the terms of said adjustment.

It will be observed that the State in this settlement is credited with the whole amount of land in odd-numbered sections and lying within five miles of the Des Moines from the Raccoon Fork to the northern boundary of the State, determined to be 558,004. 06 acres.

The State is then charged with the several quantities of land following, to wit:

1st. Indemnity land selected under special certificate dated April 25th, 1863 ..... 297,603.74 acres.

2d. Remaining lands in places yet to be certified ... 167,109.02 acres.

3d. Lands in places confirmed by the joint resolution of March 2d, 1861 ..... 44,838.64 acres.

4th. Lands selected, and heretofore certified, on the East Fork of the Des Moines River, and more than five miles from the western or main branch ..... 11,661.80 acres.

5th. The excess selected and approved to the State as a part of the 500,000 acre grant under act of September 4, 1841 ..... 35,473.54 acres.

Making in all 556,686.74 acres, and leaving due to the State, to balance the whole amount of the grant, 1,317.32 acres.

For this balance a special certificate will be issued.

44 The 11,661.80 acres on the east branch of the Des Moines River, heretofore approved to the State as a part of the Des Moines River grant, and disposed of by the State as such, are held by the department under the decision of the Attorney General to be a legitimate and proper offset to so much of this grant; hence they are charged to the State in this settlement.

The 35,473.54 acres charged in excess under the 500,000 acre grant (act 1841) includes the 22,660.05 acres over and above the 500,000 acres, which is embraced in the book of diagrams approved and certified to the State on the 12th of September, 1854, and which has hitherto been considered as the excess, and also the 12,813.51 acres, which were once approved as a part of the 500,000 acres grant and afterward rejected, and approved and certified as a part of the Des Moines River grant. These lands have been known as the river school lands. Notwithstanding that they have been disposed of as a part of the Des Moines River lands by the State, said chapter 79 requires that they shall be included and certified as a part of the grant of 1841.

Deeming it my duty to carry out the provisions of the law, regardless of my personal opinion as to their correctness or propriety, I have thus included these lands, thereby increasing said excess to 35,473.54 acres, and allowed them to be deducted from the amount of the Des Moines River grant due the State, as the department had determined.

The necessary and proper lists according to the terms of this adjustment will be made and approved by the Secretary and delivered to me or sent to the State.

In the preparation of these lists all lands which appear at the General Land Office as having been selected as swamp under act of September 28, 1850, and all tracts to which pre-emption rights had attached prior to July 12, 1862, will be excluded.

If, however, any of the tracts thus listed and certified shall be found to have been duly selected under said act of September 28, 1850, and shall be shown by legal investigation to be swamp or overflowed, or to belong to the State by said act, the government will approve and certify other lands of like quantity in lieu thereof.

This adjustment, which I think is fair and just, and should be satisfactory to the State, will, when approved by you, be a final settlement between the State of Iowa and the United States of all claims under the Des Moines River grant, as well as of the act of 1841, except so far as valid and legally subsisting adverse rights may be found to exist to any of the tracts thus approved to the State.

The excess of the 500,000 acre grant (35,473.54 acres), thus deducted, is, by an agreement between the State and the Des Moines Valley Railroad Company (the beneficiary of the grant), to be credited to said company, at the rate of one dollar and twenty-five cents per acre, in

45 the satifaction of claims against the State on account of the improvement of the Des Moines River. Said company should therefore be credited on the claims they are under obligation to satisfy with the sum of $44,341.67.

My authority extends only to settlement with the general government. I have no power to carry out this agreement between the State and the company. It is but just, however, to say that this settlement has been made with the United States with the full understanding that this arrangement should be carried out.

The company, through its agents, has for a long time been laboring to this end. The opinion and decision of the Secretary of the Interior, a

copy of which accompanying Mr. Kilbourne's report, made last winter, is herewith transmitted for your examination in connection with this adjustment, is the result of their efforts.

The labors of these agents (Messrs. Kilbourne & Mason) heretofore in the premises, have greatly relieved me, and enabled me to close up the settlement thus early. It is due the company that this credit be given as soon as possible.

I hope, therefore, that this entire arrangement will meet with your approbation, and that you will, as I think you have the right, and may safely do, fully consummate and carry it out by giving said company the benefit of said credit against said claims without delay.

Very respectfully submitted.

J. A. HARVEY,
Commissioner.

Adjustment of the Iowa Des Moines River grant under the act of July 12th, 1862, and joint resolution of March 2d, 1861.

DEBIT.	Acres.
The State of Iowa with the quantity of indemnity lands selected under special certificate, dated April 25, 1863..	298,607.74
The lands in place to be certified.....	167,109.02
The lands in place confirmed by joint resolution of March 2d, 1861.....	44,838.64
The quantity selected on the East Fork of the Des Moines River and certified to the State under the original law of August 8th, 1846.....	11,661.80
The excess selected and approved to the State under the 500,000 acre grant of 1841	35,473.54
	556,686.74
Remaining indemnity due the State.....	1,317.32
	558,004.06

46 CREDIT.

The State of Iowa with the whole *aera* of the grant above the Raccoon Fork	558,004.06

General Land Office, May 21, 1866.

J. M. EDMUNDS,
Commissioner General Land Office.

DEPARTMENT OF THE INTERIOR, *May* 22, 1866.

The adjustment, as herein stated, is hereby approved.

JAS. HARLAN,
Secretary.

THE STATE OF IOWA, *ss:*

The within adjustment, as stated, is hereby approved by us for the State of Iowa, June 20th, 1866.

W. M. STONE, *Governor,*
JAMES WRIGHT, *Sec'y State,*
JOHN A. ELLIOTT, *Auditor,*
W. H. HOLMES, *Treasurer,*
Census Board.

The item in the annexed adjustment of 35,473.54 acres being excess selections under the 500,000 acre grant to the State of Iowa, approved to said State February 20, 1851, includes 12,813.51 acres described as follows, viz:

Parts of sections.	Sec.	Tp.	R.	Acres.
W. hf of SW. qr	5	87	26	80.00
All of	7	87	26	597.92
N. hf of	9	87	26	320.00
S. hf of	15	87	26	320.00
All of	19	87	26	609.18
N. hf of	21	87	26	320.00
W. hf of	23	87	26	320.00
NW. qr	27	87	26	160.00
W. hf of E. hf. and E. hf of W. hf	29	87	26	320.00
All of	31	87	26	605.92
N. fr. hf of NW. qr, and lots 1, 2, 3, and 4	1	86	27	241.56
S. hf of	11	86	27	320.00
W. hf of SE. qr, and SW. qr	1	87	27	240.00
NE. qr	7	87	27	160.00
N. hf of	9	87	27	320.00
47 E. hf of	11	87	27	320.00
All of	13	87	27	640.00
Lots 3 and 4	15	87	27	113.90
All of	19	87	27	618.40
NE. qr, and NE. qr. of NW. qr	23	87	27	200.00
Lots 4, 5, 6, 7, 8, and E. hf of SE. qr	23	87	27	275.50
All of	25	87	27	604.25
W. hf of	27	87	27	320.00
All of	29	87	27	640.00
All of	31	87	27	626.44
E. hf of	33	87	26	320.00
W. hf of NE. qr, SE. qr, and E. hf NW. qr	31	88	27	320.00
SE. qr	3	87	28	160.00
NE. qr	11	87	28	160.00
E. hf of SE. qr, NW. qr of SE. qr, and lots 1, 2, and 3	5	88	28	252.44
W. fr. hf of section, and NE. qr	7	88	28	468.00
E. hf of section, and N. hf of NW. qr	11	88	28	400.00
SW. qr	13	88	28	160.00
W. hf of SW. qr	17	88	28	80.00
E. hf of NE. qr	19	88	28	80.00
S. hf of	21	88	28	320.00
E. hf of	25	88	28	320.00
N. hf of section, and SE. SE. qr	33	88	28	480.00
Total	....	....	....	12,813.51

Subsequently to said approval, the above lands were deducted from the lists as improper selections because found in conflict with the river grant of 1846.

The above action of the department, rejecting the above 12,813.51 acres from the original lists, was disapproved by the Secretary of the Interior, under date of February 28, 1865, hence, and in view of the annexed adjustment, covering the whole amount of excess selected and approved in 1851, the title to said above described lands is affirmed as enuring to the State of Iowa from the 20th February, 1851.

GENERAL LAND OFFICE, *May* 28, 1866.

The above is respectfully submitted to the honorable Secretary of the Interior for his approval.

J. M. EDMUNDS,
Commissioner.

48 DEPARTMENT OF THE INTEROR, *May* 29, 1866.

Approved.

JAS. HARLAN,
Secretary.

Filed in State land office, August 2, 1866.

J. A. HARVEY,
Register.

That after the making of such adjustment, and on or about the day of August, 1868, there was filed in the office of the Commissioner of the General Land Office an affidavit of the said commissioner, J. A. Harvey, of which the following is a copy:

STATE OF IOWA,
County of Polk, ss:

Personally appeared before the undersigned, a notary public in and for said county, Josiah A. Harvey, who, being sworn, on oath states that he is the commissioner appointed by chapter 79 of the acts of the 11th general assembly of the State of Iowa, to adjust for said State certain land matters with the general government, and that the settlement relative to the excess of lands received by the State under the grant of September 4, 1841, and the lands falling to the State under the joint resolution of March 2, 1861, and the act of Congress of July 12, 1862, and which was approved by the Secretary of the Interior, May 22, 1866, was made in pursuance of said act of the general assembly, and in view of the law, as it was understood to be settled in the case of the "Dubuque & Pacific Railroad Company vs. Litchfield" (23 Howard, 66), without regard to the interests or claim of the "De Moine Navigation & Railroad Company," or those claiming under them, and that, so far as he knows, said company never, in any manner, consented to or approved of said settlement; that they were not consulted relative to it, nor had anything whatever to do with it so far as he knows; and further saith not.

JOSIAH A. HARVEY.

Sworn and subscribed before me by by the said Josiash A. Harvey, this July 10, 1868.

Witness my hand and notarial seal.

[NOTARIAL SEAL.] SAMUEL A. AYRES,
Notary Public, Polk County, Iowa.

49 This action was heard, submitted, and decided upon the foregoing depositions of Samuel A. Ayres, J. W. Cattell, John Browne, Cyrus C. Carpenter, Charles B. Richards, Thomas Sargent, J. M. Bell, Michael Sweney, John Eckstein, and Isaiah Doane, and the stipulations above set forth as Stipulation No. 1, Stipulation No. 2, Stipulation No. 3, Stipulation No. 4, Stipulation No. 5, Stipulation No. 6, and Stipulation No. 7, and upon no other evidence or proof.

And now on the 23d day of November, 1872, the court, upon the pleadings and proofs aforesaid, made and rendered a decree herein, of which the following is a copy:

District court of Hamilton County, Iowa, 12th day of term, November 23, 1872.

EDWIN C. LITCHFIELD
vs.
THE COUNTY OF HAMILTON, AND HIRAM BENNETT, treasurer of said county. } Eq. 113.

Now, at the November term, A. D. 1872, of the district court of the State of Iowa, in and for said county of Hamilton, being the 12th day of the term, and the 23d day of November, A. D. 1872, this cause came on for final hearing, with J. M. Ellwood, esq., appearing as counsel

for the plaintiff, and John H. Bradley, esq., as counsel for the defendant; this cause having been submitted to the court upon the issues made by the pleadings and stipulations of the parties, and the evidence introduced, and the court, after a full and careful investigation of the matters in issue, being fully advised in the premises, does find and determine, and it is now ordered, adjudged, and decreed, that the injunction heretofore issued on the order of the Hon. G. G. Wright,
50 judge of the supreme court of Iowa, made on the 8th day of October, A. D. 1867, enjoining and restraining the defendants from the sale of the following described lands in said county, to wit, sections 3, 5, 7, 9, 15, 17, 19, 21, 29, 31, and 33, all in township eighty-six, range twenty-six; also the N. ½ NE. ¼ and SW. ¼ NE. ¼ and W. ½ SE. ¼ and W. ½ of sec. 11; sections 5, 7, 19, 27, 31, 33, and 35, and N. ½ and N. ½ SE. ¼ and SW. ¼ sec. 9, and N. ½ NE. ¼ and SW. ¼ of NE. ¼ and S. ½ and N. ½ NW. ¼, SW. ¼ NW. ¼ of section 15; also NE. ¼ NE. ¼, and SW. ¼ SW. ¼, and N. ½ SW. ¼ of section 21; and W. ½ and W. ½ SE. ¼ of section 23; also N. ½ and SE. ¼, and SE. ¼ SW. ¼, and N. ½ SW. ¼ of section 29, all in township 87, range 26; also section 31 and SW. ¼ SW. ¼ section 29, all in township 88, range 26 west of the 5th P. M., Iowa, for the taxes delinquent thereon, for the years A. D. 1859, 1860, 1861, 1862, 1863, 1864, and 1865, be made perpetual against said defendants, its officers and agents, and the said defendant, its officers and agents, are hereby perpetually and forever enjoined from selling or offering said lands or any part thereof for sale, for the taxes, penalty, interests, or costs assessed or levied for the years A. D. 1859 and 1860, and the taxes thereon for the said years last mentioned are hereby declared and held for naught, as a lien or incumbrance on said lands.

And it is further ordered, adjudged, and decreed that the said injunction be and the same is hereby dissolved and held for naught, as to the taxes levied and assessed by the said defendant or its officers upon said lands above described, and upon all the lands in issue in the pleadings in this cause, for the years 1861, 1862, 1863, 1864, and 1865, and subsequent years to the year 1861, and from this day, the said defendant and its officers are authorized to proceed to collect the said taxes, on said lands before mentioned, for the years last aforesaid, as though no injunction had been issued in the premises; and this cause coming on for hearing on the application of defendant for damages on the in-
51 junction bond, it is further ordered that the said defendant have and recover of the said plaintiff and his sureties, on his injunction bond, to wit, John Browne and James C. Savery, esq., the attorneys' fees, for the wrongful issuing of said injunction, which is found to be the sum of $150.00, and the costs herein expended, taxed at $35.45, and that execution issue therefore against said plaintiff and said sureties, to all of which rulings and judgment the parties severally excepted.

D. D. CHASE,
Judge.

On the 20th day of May, 1873, the plaintiff perfected an appeal to the supreme court of the State of Iowa, by serving upon the defendants and clerk of the district court of Hamilton County a notice of appeal, and subsequently executing a supersedeas bond; and on the 21st day of May, 1873, the defendants served the proper notice of cross-appeal on plaintiff and the clerk.

J. M. ELLWOOD,
Attorney for Plaintiff.

52 And on the 15th day of June, 1874, appears the following record entry:

E. C. LITCHFIELD, APP'L'T,
vs.
HAMILTON COUNTY.

Appeal from Hamilton district court.

On this day this cause is submitted to the court on printed argument of counsel.

53 And on the 27th day of October, 1874, appears the following record entry:

E. C. LITCHFIELD
vs.
HAMILTON COUNTY.

Appeal from Hamilton district court.

In this cause, the court, being now fully advised in the premises, file their written opinion *opinion* reversing the judgment of the district court on both appeals.

It is therefore considered by the court that the judgment of the court below be and it hereby is reversed and set aside, that further proceedings be had in said court not inconsistent with the opinion of this,
54 and that a writ of procedendo issue accordingly.

It is further considered by the court that each party pay one-half the costs of this court, taxed at $.

And on the 8th day of December, 1874, appears the following record entry:

EDWIN C. LITCHFIELD, APP'L'T,
vs.
HAMILTON COUNTY ET AL.

Appeal from Hamilton district court.

On this day this cause is submitted to the court on appellant's petition for a rehearing.

55 And on the 14th day of December, 1874, appears the following record entry:

E. C. LITCHFIELD
vs.
HAMILTON CO.

Appeal from Hamilton district court.

In this cause, the court being now fully advised in the premises, order that defendant reply in print to plaintiff's petition for a rehearing.

56 And on the 16th day of March, 1875, appears the following record entry:

E. C. LITCHFIELD
vs.
HAMILTON COUNTY.

Appeal from Hamilton County district court.

At this time this cause is submitted to the court on printed petition and reply of counsel.

57 And on the 15th day of June, 1876, appears the following record entry:

E. C. LITCHFIELD, APPELLANT,
vs.
HAMILTON COUNTY ET AL.

Appeal from Hamilton district court.

This day came said E. C. Litchfield and moves the court to set aside the order entered in this court on the 27th day of October, 1874, for reasons therein stated. Whereupon it is ordered by the court that said motion stand continued for hearing at the Council Bluffs term next hereafter to be held; that notice of said motion be served by said Litchfield upon defendants, or their attorneys, thirty days before said term, and that pending said motion all proceedings in said cause
58 under or by virtue or said order be and the same hereby are stayed.

And now on the 19th day of September, 1876, appears the following record entry:

EDWIN C. LITCHFIELD, APPELLANT,
vs.
THE COUNTY OF HAMILTON.

Appeal from Hamilton district court.

Now on this day comes the plaintiff, Edwin C. Litchfield, and in open court craves leave to withdraw his motion filed herein on the 19th day of June, 1876, to set aside the order entered in said cause in this court on the 29th day of October, 1874, and the court on consideration
59 of said application grants the same. And it is ordered that plaintiff be permitted to withdraw said motion, and that the order heretofore made on the presentation of said motion remain no longer in force.

And on the 16th day of January, 1877, appears the following record entry:

EDWIN C. LITCHFIELD, APPELLANT,
vs.
THE COUNTY OF HAMILTON AND HIRAM BENnett, treasurer.

Appeal from Hamilton district court.

60 Be it remembered that on the 14th day of December, 1876, the above cause came on for hearing on defendant's motion to recall procedendo, correct the journal entry made remanding the cause to the district court of Hamilton County, and have decree entered in this court in obedience to the opinion and decision of the court heretofore. And the court being fully advised in the premises, orders, directs, and adjudges that said procedendo be recalled and that said motion be sustained, and that said journal entry remanding the cause be expunged, and that final decree be now entered in this cause in obedi*a*nce to the said opinion and decision of the court, and thereupon the court

61 finds that all of the lands mentioned and described in plaintiff's petition were liable for taxation for general revenue purposes in the county of Hamilton for each of the years A. D. 1859, 1860, 1861, 1862, 1863, 1864, and 1865, and that the taxes standing against said lands for each of said years were duly levied and assessed thereon as provided by law, that said taxes for each of said years were due, delinquent, and unpaid, and that Hiram Bennett, defendant, as treasurer of said county rightfully and lawfully advertised said lands for sale for said delinquent taxes at the time and in the manner required by law.

The court further finds that all the penalties and interest standing against said lands for each of said years are a lawful charge and lien thereon.

And the court further finds that there is no equity in plaintiff's

62 petition and that the preliminary injunction granted in this case restraining the defendants from collecting the taxes levied and assessed on the lands described in plaintiff's petition was wrongfully issued.

The court further finds that there is no evidence showing the amount of damages, if any, sustained by defendant on account of the issuance of the injunction.

It is therefore ordered, adjudged, and decreed by the court, that the injunction issued in this cas' enjoining the defendants from the collection of the taxes standing against the lands described in the petition for each and every of the years therein mentioned be forever dissolved and held for naught, and that plaintiff's petition be dismissed for want of equity.

63 And it is further ordered, adjudged, and decreed by the court that all of the taxes, interest, penalties, and costs, now standing against the lands described in plaintiff's petition for each and every of the years A. D. 1859, 1860, 1861, 1862, 1863, 1864, and 1865, are *a* delinquent and collectable, and that said county and its treasurer may proceed to collect the same by sale of said lands or otherwise as provided by law.

And it is further ordered and adjudged by the court that the judgment rendered in the court below for $150, against the plaintiff for damages for the wrongful issuance of the injunction, be set aside and cancelled.

And it is further ordered and adjudged and decreed by the court that plaintiff pay one-half of the costs made on appeal to this court and that defendants pay the other half.

64 To all of which the plaintiff Litchfield at the time excepted.

And thereupon the application of said plaintiff, Edwin C. Litchfield, it is certified by the court here that on the hearing and in the decision of said cause, the validity of the authority of the

defendants exercised under the State of Iowa pursuant to chapter 45 Revised Statutes of said State, and the amendments thereto then in force, being the laws of said State in relation to the levy and collection of taxes, in the levy and attempt to collect the taxes and penalties in controversy, was drawn in question on the ground that the same was and is repugnant to the act of Congress of August 8th, 1846, entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory"; the joint resolution of Congress of March 2d, 1861, entitled "Joint resolution to quiet title to lands in the State of Iowa"; the act of Congress of July 12th, 1862, entitled "An act confirming a land claim in the State of Iowa, and for other purposes"; the 7th section of an act of Congress of March 3d, 1845, entitled "An act for the admission of the State, of Iowa and Florida into the Union"; and the 5th subdivision of section sixth of act of Congress of March 3d, 1845, entitled "An act supplemental to the act for the admission of the States of Iowa and Florida into the Union," being the act and an act amendatory thereto for the admission of said State into the Union, and providing in the sections specified that neither of said States should ever interfere with the primary disposal of the public lands lying within their respectively, nor levy an' taxes on the same whilst remaining the property of the United States, and that said plaintiff claimed herein under said acts of Congress and said joint resolution the right of exemption from the payment of taxes and penalties thereon hereon sought to be enforced, and that our said decision was and is in favor of the validity of said authority, so exercised and claimed by said defendants and against said alleged right so claimed by said plaintiff, and in which said plaintiff claimed the right, privilege, and immunity of exemption from liability to pay any of said taxes and penalties under the joint resolution and acts of Congress aforesaid, and under the authority exercised under the United States by the Secretary of the Interior, Commissioner of the General Land Office, and their inferior officers of the land department of the United States in certifying said lands to the State of Iowa, as public lands enuring to said State under the grant of May, 1856, to said State known as the railroad grant, and under the authority subsequently exercised under the United States by the aforesaid officers thereof, with respect to said lands, as still being public lands of the United States, and as such subject pre-emption and homestead entry. And that our decision herein was and is in favor of the validity of the authority so exercised by the said defendants under said laws of the State of Iowa and against the right, privilege, and immunity so claimed by plaintiff under the said joint resolution, acts of Congress, and authority so exercised by said officers of the United States.

And now this 3d day of March, 1877, a writ of error was allowed in words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the district of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Edwin C. Litchfield and The County of Hamilton, and Hiram Bennett, treas. of said county, wherein was drawn in

question the validity of the authority exercised under the State of Iowa, on the ground of its being repugnant to the laws of the United States, and the decision was in favor of the validity of such authority, and wherein certain rights, privileges and immunities were claimed under the statutes of and authority exercised under the United States, and the decision was against the rights, privileges and immunities so claimed, a manifest error hath happened to the great damage of the said Edwin C. Litchfield as by his complaint appears: We being willing
70 that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceeding aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

71 Witness, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 27th day of Feb., A. D. 1877.

[SEAL.] EDWARD R. MASON,
Clerk U. S. C. C., Dist. of Iowa.

JAMES G. DAY,
Chief-Justice of the Supreme Court of Iowa.

Filed March 3d, 1877.

E. J. HOLMES,
Clerk S. C.

Also appears the following bond:

Know all men by these presents that we, Edwin C. Litchfield, John Browne, and J. H. Merrill are held and firmly bound unto the county of Hamilton, in the State of Iowa, and Hiram Bennett, treasurer of said county, in the full and just sum of two thousand dollars,
72 to be paid to the said county of Hamilton, Hiram Bennett, treasurer thereof, their certain attorney or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 24th day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas lately at a term of the supreme court of the State of Iowa, in a suit depending in said court between said Edwin C. Litchfield, plaintiff, and The County of Hamilton, in the State of Iowa, and Hiram Bennett, treasurer of said county, defendants, judgment was ren-
73 dered against the said Edwin Litchfield, plaintiff, and the said Edwin C. Litchfield, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to remove the judgment in the aforesaid suit, and a citation directed to the county of Hamilton and Hiram Bennett, treasurer of said county, citing and admonishing them to be and appear at a Supreme Court of the United States, to be *be* holden at Washington the second Monday of October next.

Now, the condition of the above obligation is such that if the said Edwin C. Litchfield shall prosecute said writ of error to effect, and an-

swer all damages and costs, if he fail to make his plea good then the above obligation to be void, else to remain in full force and virtue.

E. C. LITCHFIELD. [SEAL.]
74 J. BROWNE. [SEAL.]
J. H. MERRILL. [SEAL.]

Approved by me this 27th day of February, A. D. 1877.

JAMES G. DAY,
Chief Justice of the Supreme Court of Iowa.

Filed March 3d, 1877.

E. J. HOLMES, *Clerk S. C.*

Also appears the original citation.

75 UNITED STATES OF AMERICA, *ss:*

The President of the United States to The County of Hamilton, in the State of Iowa, and Hiram Bennett, treasurer of said county:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the United States circuit court for the district of Iowa, wherein Edwin C. Litchfield is plaintiff in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable James G. Day, chief justice of the supreme court of Iowa, this 27th day of February, 1877.

JAMES G. DAY,
Chief Justice of the Supreme Court of Iowa.

76 This citation came into my hands for service on the 6th day of March, A. D. 1877, and I served the same on the within named Charles Wickwire, auditor of Hamilton County, Iowa, and J. W. Lee, chairman of the board of supervisors of Hamilton County, Iowa, by reading the same to them and delivering to each of them personally a true copy of the same, at Webster City, Hamilton County, Iowa, on the 8th day of March, 1877.

JOHN W. CHAPMAN,
U. S. Marshal,
By F. A. HARRIS,
Special Deputy.

Marshal's fees: Miles 115, 6.90; service 2, 4.00; copy 2, 2.00; $12.90.

I hereby certify that the within named Hiram Bennett could not be found in my district.

JOHN W. CHAPMAN,
U. S. Marshal.

(Indorsed:) Litchfield v. Hamilton Co.

77 Supreme court of Iowa.

I, E. J. Holmes, clerk of the supreme court of Iowa, hereby certify the foregoing to be full and complete copies of the original record, record entries, writ of error and bond, also the original citation and return, as

true full and complete as the same appears on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court this 13th day of August, A. D. 1877.

[SEAL.] E. J. HOLMES, *Clerk S. C.*

(Indorsement on cover:) No. 174. Edwin C. Litchfield, pl'ff in error, vs. The County of Hamilton and Hiram Bennett, treasurer of said county. Iowa sup. court. Filed 31st August, 1877.

O

IN THE

Supreme Court of the United States.

EDWIN C. LITCHFIELD,
Plaintiff in Error,

vs.

THE COUNTY OF HAMILTON AND HIRAM BENNETT, TREASURER OF SAID COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

Brief of Plaintiff in Error.

GEO. G. WRIGHT,
Solicitor for Plaintiff in Error.

P. C. KENYON, Legal Printer, Des Moines, Iowa

IN THE

Supreme Court of the United States.

EDWIN C. LITCHFIELD,
Plaintiff in Error,

vs.

THE COUNTY OF HAMILTON AND HIRAM BENNETT, TREASURER OF SAID COUNTY.

In Error to the Supreme Court of the State of Iowa.

GEO. G. WRIGHT, *Solicitor for Plaintiff in Error.*

BRIEF OF PLAINTIFF IN ERROR.

This is a proceeding in equity, commenced in 1867, to restrain the respondents from selling certain lands for the taxes of 1862 to 1865 inclusive, to have said taxes declared illegal and for general relief. The district court of Hamilton county, Iowa, granted the relief asked for 1859 and 1860, and denied it as to all subsequent years. In the Supreme Court of the state all relief was refused and our bill unconditionally dismissed. It is from this order we appeal.

This case is "on all fours" with that of this complainant against Webster county, submitted at the present term under the 20th rule. To that case and the argument there made, we refer without undertaking to repeat it. If that is decided before this is reached, it is decisive of this whatever the result. If not decided, then, still having it before you, to repeat the argument would of course be quite unnecessary. And especially so we may remark, since we have furnished respondents' counsel in this case with our opening and closing argument in that, and he is thus in possession of the grounds upon which we ask a reversal. We shall therefore, as required by the rules, merely present a brief of our points.

Complainant claims under the grant of August 8, 1846, for the improvement of the Des Moines river. The lands, which he claims are exempt from taxation for the years named, are north of and above the Raccoon Fork of the river, in this case in Hamilton, in the other in Webster county. This exemption he claims for the following reasons and relies upon authorities cited under each head:

I.

The compact made with Iowa when the state was admitted into the Union was such that the lands were not taxable prior to May 21, 1866, when, by the adjustment between the state and the Land Department the title was transferred by the United States. (Act of Congress March 3, 1845, section 7; supplemental act same date, section 5.)

Emmerson vs. County of Washington, 9 Greenl., 88.
McGoon vs. Scales, 9 Wall., 23.
Moore vs. Robbins, 96 U. S., 530.

II.

If, at any time prior to 1866, the state or its grantees had any title, or the United States had so parted with its interest as to make the lands taxable, certain it is that there was no title in the state or its grantees prior to the passage of the joint resolution of March 2, 1861, and the lands were in no event taxable prior to 1861, *and one year thereafter.*

Iowa Rev. of 1860, §§ 711.

By this it is declared—

"that Government lands entered or located, or lands purchased from this state shall not be taxed for the year in which the entry, location or purchase is made."

And see—

McGregor Co. vs. Brown, 39 Iowa, 655.
Iowa Falls Co. vs. Cherokee Co., 37 Ib., 483.
Goodrich vs. Beaman, Ib., 563.
Iowa Falls Co., vs. Woodbury Co., 38 Ib., 498.

If the act of July 12, *1862*, by its own force vested the title (which is not admitted), then the lands were not taxable until 1863.

III.

By the case of *D. & P. Co. vs. Litchfield*, 23 How., 66, it was decided in 1859, by this court, that the grant by the act of August 8, 1846, did not extend above the Raccoon Fork, and that all attempts of the officers of the Government to transfer the title to the lands above that point were *null and void.*

And see—

Williams vs. Baker, 17 Wall., 144.
Act of Congress, August 3, 1854, Ch. 201, p. 346.

IV.

Whether this title so passed and *when* it passed is to be determined by the laws of the United States. And until it passes, and though the state may hold it as a trustee, it can not be taxed.

Wilcox vs. Jackson, 13 Pet., 498.
Tucker vs. Ferguson, 22 Wall., 572.

V.

So long as the decision of the Land Department of the Government that these lands had not passed from the Government remained unreversed and undisturbed, they were not taxable. And, hence, as these decisions were adverse to any claim of complainant until after the adjustment in 1866, there was no power in the state to tax before that time.

Litchfield vs. Register, &c. 9 Wall., 575.

VI.

To that time the lands had been reserved or appropriated —after the decision in the Litchfield case in 1859—to meet the demands of the grant for railroad purposes under the act

of 1856, and they were in fact certified for the purposes of that grant. This being so, they could not be taxed as the property of other owners.

VII.

Neither the joint resolution of March 2, 1861, nor the act of July 12, 1862, *confirmed*, nor were they intended to *ratify* the title under the act of August 8, 1846. They do not so provide in terms, nor could they well do so, since there was *no title* in the state to confirm or ratify. It was not a case of *defective* grant, but one where no title whatever had passed to the state. It was still in the United States. And since these taxes were levied upon the whole title, the whole land, and not upon improvements, or a possible equity, or the like, and since too, the title was in the United States and never had passed from it, the tax was utterly illegal and void. The state could not by taxation obstruct, or interfere with the control of the United States over its title and right to dispose of this property, nor had it taxable jurisdiction until the title had passed.

Gibson vs. Chauteau, 13 Wall., 92.
Bagnell vs. Broderick, 13 Pet., 436.
Morrow vs. Whitney, 95 U. S., 551.
Colorado Co. vs. Commissioners, Ib., 259.
Calder vs. Keagan, 30 Wis., 136.
Whitney vs. Gunderson, 31 Ib. 359; and see 29 Ib., 383.
Bronson vs. Kukuk, 3 Dillon, 490.

VIII.

A grant of this kind cannot take effect until *accepted* by the grantee, and the act of August 8, 1846, expressly provided for such acceptance for the purpose named. This was applicable to all of the acts relating to this grant being acts in *pari materia*. No title passed by the act of 1846, and there was no *acceptance* under the resolution of March 2, 1861, until the act

of the State Legislature of March 30, 1866, providing for the adjustment. No title, therefore, equitable or otherwise, vested in the state until such acceptance, for something remained to be done by the state before it could so pass or vest.

Railway Co. vs. Prescott, 16 Wall., 603.
11 Wheat., 385.

IX.

If the joint resolution of 1861, or act of July 12, 1862, shall be regarded as confirming a previously defective grant, and that such defective title was thereby perfected from the date of its inception, under the doctrine of *relation*, it does not follow that by relation also, the lands would become subject to the intervening burdens of taxation, and particularly to taxes and interest not due. This doctrine is, at most, but a fiction of the law, and is applied to promote justice, protect titles and never to impose burdens, whereby the title of the Government may be rendered worthless by state legislation.

Stark vs. Stark, 6 Wall., 618.
Gibson vs. Chauteau, 13 Ib., 92.
Lessieur vs. Price, 12 How., 59.

And see—

3 Cains, 263, 16 Vin's. Ab., 196.
13 Coke's R. 21, 4 Johns., 234; 21 Barb., 589.

Nor is it ever so applied as to make a subsequent act relate to an antecedent *void* act.

Doe vs. Howland, 8 Cowen, 277.
Jackson vs. Stevens, 16 Johns., 110.

X.

The joint resolution of 1861, did not make a grant, but simply *relinquished* the title of the United States to such only of the entire body of the so-called river lands above the Raccoon Fork, as were then held by *bona fide* purchasers under the state. To ascertain and identify the lands so

relinquished, it was absolutely necessary to settle and determine what lands were so held. (These lands were not so identified and ascertained until 1866.) The necessity of this is apparent from the act itself, as well as the action of the Commissioner of the General Land Office—the other offices of the Government—the state legislation, and of the state officials; and so it has been held.

I. R. R. L. Co. vs. Story Co., 36 Iowa, 48.

XI.

Since the title of the state was constantly denied by the United States until after 1868, and that of its grantees by the state at the same time, and it was insisted that the lands belonged to claimants under the railroad act of May 15, 1856, or to pre-emption and homestead claimants, or to the state under the school grant of 1841 (8 section); we say that under such circumstances the state is estopped from asserting the validity of the taxes in controversy.

That counties and municipal corporations may be estopped, see—

Bigelow on Estoppel, 464.
County of Randolph vs. Post, 3 Otto, 573.
I. R. L. Co. vs. Story Co., 36 Iowa, 48.
Adams Co. vs. B. & M. Co., 39 Ib., 507.

And, as to the office of estoppel, see—

11 How., 326, Bisphams Prin. in Eq., Sec. 280.
Bigelow on Estoppel, 276-7.
Commonwealth vs. Heirs of Andre, 3 Pick., 225.

XII.

This court has held that these lands now belong to the river grant, and that the grantees of the state have a good and valid title. But in no one of the cases, so holding, commencing with 23 How., and ending with 17 Wall., 166, has it been determined *when* the title was transferred from or passed out

of the United States. And yet that is the precise question here presented. The last case (*Homestead Co. vs. D. W. & R. R. Co.*, 17 Wall., 166) shows most conclusively that something was needed to "pass a valid title to the state and its grantees," and that this was obtained by the legislation of the state and Congress, to-wit: the state legislation of 1868 (Fol. 41-43), and of Congress in 1871, the latter act confirming the title to the state and its grantees, and thus clearly, up to the time of the adjustment, at least, the title remained in the United states.

XIII.

If these lands were taxable for any of the years named, our equities were such as to excuse the non-payment of such taxes, and in no event are we liable to the excessive interest allowed by the court below. Judge DILLON so held in the *Webster county* case, declaring the lands non-taxable for the years 1859, 1860, and 1861, and fixing the interest at six per cent. for the years following. These equities, we discussed very fully in that case and need not repeat the argument. From this record your Honors will see how constantly our title was denied; how the state certified the lands to the railroad company under the act of 1856; how parties were allowed to take them for homestead and pre-emption purposes; how the state officers declined to advertise them for sale for taxes; how the state intervened in litigation to defeat our title; how we were as constantly engaged in the effort to have our title perfected, and how great was the doubt and uncertainty as to the state of this title. These, your Honors, are but a tithe of the circumstances tending to show the persuasive character of these equities and the considerations which must defeat the claim of interest. And that it is competent to grant this relief, see—

1 Story Eq. Jur., 1314, 16-20.
Quick vs. Stuyvesant, 2 Paige, Ch. 84.
Dillon Municipal Corp. 728.

2 Coopers Eq. Pl. 128-9.
Rathbone vs. Warren, 10 John., 587.
King vs. Baldwin, 17 John., 384.
Preston vs. Daniels, 2 G. Greene, 536.
Brown vs. Brown, 1 Barb., Ch. 189.

(For testimony bearing upon this point, see Fol. 14 to 20, 31 to 35, and stipulation 36 to 41). We followed the suggestion of the Supreme Court of the state in the Stryker case (22 Iowa 131) where it was said "there were strong equitable reasons for the position that complainant was entitled to this relief (against the heavy interest) but that we should go to the board of supervisors in the *first instance*." We did go there, with what result the record shows. Failing there we have applied for equitable relief to the court.

XIV.

The taxes on these lands are about two thousand dollars—accumulated interest now largely over twelve thousand. As we have seen, the state at all times disparaged our title. A vendor who holds the obligation of his vendee for deferred payments with interest, who, by his acts has deprived his vendee of the use and enjoyment of the lands sold, would not in a court of equity, be entitled to recover the accumulated interest. And this because the purchaser has, by the acts of the vendor, been prevented from reaping the fruits of his purchase to which he was rightfully entitled. And this most equitable rule, we insist, shall be applied to the state in this instance. See—

1 Am. L. Cases, 4th Ed., 526.
Stevenson vs. Maxwell, 2 Sandf., Ch. 273.
Railroad vs. Gesner, 20 Penn. St., 240.
McCormack vs. Crall., 6 Watts, 212.
McKennon vs. Sterret, Ib., 163.
Kester vs. Rockel, 2 W. & S., 371.
2 Sugden Vendors, 255, 274, and notes.

XV.

The power to grant this relief must rest somewhere. A party surely is not remediless. To so hold would tarnish the escutcheon of the judiciary and be a disgrace to the state and its laws.

XVI.

We were not bound to know the law arising upon the construction of this grant, doubtful as its terms were.

Beachamp vs. Winn, 6 Eng., and I. Ap. 234.
King vs. Doolittle, 1 Head, 86-7.
1 Story's Eq., §§ 122–1381.
Kerr on Fraud and Mistake, 398–402.

XVII.

The relief here asked, if these lands are taxable for any year, is against excessive *interest*, and not a statutory *penalty*. The Iowa statute (Rev. 1860, § 760 *et seq.*, Code 1873, commencing with section 635), it will be seen, speaks of this as *interest* in *ten* different places and as *penalty* but once, and then *penalty* is used as the equivalent of *interest*.

XVIII.

The right to tax is not so far a private vested one that it may not be divested. And as the sovereign power might exempt lands from taxation by legislation, so it may as effectually do so by, in every possible way, denying the title under which the party claims and asserting a title in itself adverse thereto.

XIX.

By failing to advertise these lands for taxes upon the ground of doubt as to their liability, the county waived its right to the claim now set up for interest.

XX.

If the state is estopped so is the county. The powers of the county, delegated and limited, are derived from the state, and its claimed right to tax is essentially and really the power or right of the state.

XXI.

The action of the board of supervisors, misnamed *classification* of the lands (folio 28), was unauthorized and a clear departure from the intent and purpose of the statute. (Rev. 1860, §§ 732-3).

Laws of 9th Gen'l Assembly (Iowa), Ch. 173, §§ 4, 5.
Cooly on Taxation, 276.
Blackwell on Tax Titles, 153, and notes.

The board, by the attempted classification, assumed to discharge duties belonging to the assessor.

XXII.

No warrant was attached to the tax list for the years 1861–66 inclusive, and as this is required by law, there was no power to collect or advertise for sale.

Rev. of 1860, Sec. 748.

XXIII.

The treasurer failed to advertise these lands for the taxes in the year 1860, and so for other years. He had no power in 1866 to advertise or sell for any year preceding 1865, for his powers, we need not say, are limited.

Able vs. Cross, 17 Iowa, 176.
Preston vs. Van Garder, 31 Ib., 250.

And since, if he had advertised and sold these lands for the years named, the amount, with interest necessary to redeem, would have been very much less than the accumulated interest as now claimed, it is unequitable that such interest should

now be claimed, the respondents by their failure to so advertise and sell having thus increased the burdens. And since, too, we offered to pay the taxes with a reasonable rate of interest, they ought not, in equity, now ask or be intitled to more. But we deny that they are entitled to anything, either taxes or interest, for any year.

GEO. G. WRIGHT,
Solicitor for Complainant.

We have just noticed that the opinion of the State Supreme Court in this case was accidentally omitted from the transcript. We append it hereto, that the rule may be practically complied with. It is as follows:

OPINION.

BECK, J.—The lands upon which the taxes in question were levied are a part of the Des Moines river grant, and on the 3d day of May, 1858, were by patent conveyed by the state to the "De Moines" Navigation and Railroad Company, plaintiff's grantor. From the time these lands were certified by the Secretary of the Interior to the state of Iowa, under the act granting them, which was approved August 8, 1846, the officers of the state and United States, and all parties claiming under the grant, regarded the title based on it as valid. The United States Supreme Court, on the 9th of April, 1860, in the case of *Litchfield vs. The Dubuque & Pacific Railroad Company*, 23 Howard, 66, decided that the grant of August 8, 1846, did not cover lands north or above the Raccoon Fork of the Des Moines river. The lands upon which the taxes in question were based lie above that branch of the river, and under this decree were excluded from the grant.

On the 2d day of March, 1861, for the purpose of securing and perfecting to *bona fide* purchasers under the state the title of the lands above the Raccoon Fork, which had been previously certified to the state under the act of August 8, 1846, Congress adopted a joint resolution, releasing to the state of Iowa these lands. An act of Congress of July 12, 1862, for the purpose of confirming the title to the lands, supposed to have been granted by the act of August 8, 1846, to the state of Iowa, extended the grant to the northern line of the state.

The lands of plaintiff are held under these acts of Congress and the patent from the state. They were assessed for taxation and taxes levied thereon in 1859, and in each subsequent year up to and including 1865.

Plaintiff insists that these lands were not taxable until after the confirmatory acts above referred to. The position is assumed on the ground that the title,

up to that time, was in the United States, and the state could not, therefore, levy taxes upon the lands until the plaintiff, or his grantor, had acquired title.

This precise question was determined in *Stryker vs. Polk County*, 22 Iowa, 131. The title to the lands held subject to taxation in that case was derived under the same grant, and in fact the lands were a part of the grant situate above the Raccoon Fork. The same legislation, both state and national, was involved in that case as in this. The facts, so far as this point is concerned in this case, differ in no respect from those of that. It was held that the lands were taxable for 1859 and subsequent years. The decision is based upon the doctrine that the confirmatory Congressional legislation related back to the first grant by the state, and perfected the title from that date. It is supported by the following cases: *U. S. vs. Arredondo*, 6 Pet., 691-713; *Ross vs. Supervisors, etc.*, 12 Wis., 26.

The lands were assessed and taxed in 1859, under chapter 152, acts Seventh General Assembly. No such provision is found in that statute as Rev., § 711, upon which plaintiff's counsel bases an argument in support of the position that the lands were not taxable until one year after their purchase of the state.

II. It is next urged that the officers of Hamilton county, in the assessment, levy and equalization of the taxes, failed to observe the requirements of the statute, and these proceedings were irregular and defective.

These irregularities consist, 1st, in the classification of the lands by the supervisors as to their values; 2d, the assessment of the lands to unknown owners in eighty acre tracts; 3d, the want of a warrant to the tax list; 4th, the failure of the treasurer to offer the lands for sale at a time required by law.

1. It is not alleged that the assessment was excessive or unjust. Plaintiff, therefore, cannot claim relief here from an irregular assessment that works him no prejudice.

2. The abstract does not show that the assessment was made in larger tracts than is authorized by law.

3. The authority for the collection of taxes and sale of land therefor is found in the statute, and a warrant is not essential. *Parker vs. Sexton*, 29 Iowa, 425; *Hurley vs. Powell, Levy & Co.*, 31 Iowa, 65.

4. The failure to sell plaintiff's land for the taxes due at a time when the sale could have been made, did not defeat the right to sell at a subsequent date.

Revision, Sec. 763, requires the treasurer to offer for sale all lands at a time therein named, for the delinquent taxes of prior years. There is nothing in the section which authorizes the construction that a sale can be made at no other time. On the contrary, it expressly contemplates the case of delinquent taxes for years prior to the one in which the sale is had. The legislature clearly contemplated conferring power to sell, at any regular sale, the lands for all prior delinquent taxes, and no reservation is made limiting the power so that it will not extend to lands that could have been before sold.

But a familiar principal of law, recognized by this court, may be stated as a general answer to all these objections which are based upon mere irregularites,

and not upon want of power. Equity will not interfere to stay the collection of taxes authorized by law, to which the property is justly liable, on account of mere irregularities. *Conway vs. Younkin*, 28 Iowa, 295.

It is not shown in this case that there was a want of power to levy the taxes, that the property is not justly liable thereto, or that they are excessive. Equity will not grant relief to parties to discharge them of public burdens which they ought justly to share.

III. It is lastly insisted that equity will relieve plaintiff of the interest and penalties which have accrued upon the taxes, on the grounds that the title to the land for a long time was in doubt and uncertainty; that the officers of the national government disputed or would not recognize plaintiff's title, and sold portions of said lands, and that a railroad company, claiming adversely to plaintiff conveyed other tracts, which have been entered upon by the purchasers, greatly to plaintiff's damage. Other matters of this kind are alleged as equitable reasons for the abatement of interest and penalties. It is claimed by plaintiff that this court held, *Stryker vs. Polk County*, *supra*, these facts entitled plaintiff to the relief claimed. We do not find that it was so decided in that case. It would certainly greatly retard the collection of the state revenue to establish the rule that parties holding doubtful titles should be relieved of the duty of promptly paying their taxes, and should not be liable for the interest and penalties prescribed by law. The case made by plaintiff is simply a case of disputed title. The county or state did or suffered nothing to affect prejudicially plaintiff's title. There is no reason why defendant should be deprived of its lawful claim on account of the misfortune of plaintiff, caused without its fault.

We have held in a recent case that a court of equity, where parties in good faith contested the validity of taxes, could not relieve them of the interest and penalties prescribed by statute for delinquent taxes. The equities in that case were quite as persuasive as in this. *C. R. & M. R. Railroad Co. vs. Carroll Co.*, *post*.

The foregoing considerations dispose of all the points made in this case. A decree will be entered here dissolving the injunction and dismissing plaintiff's petition as to all the taxes and penalties for all the years mentioned in his petition. The county will be at liberty to collect all of them. There is not sufficient evidence in the abstracts before us to authorize the allowance of damages on the injunction bond. Costs of this court will be equally divided.

REVERSED ON BOTH APPEALS.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1879.

EDWIN C. LITCHFIELD,
Plaintiff in Error,
vs.
THE COUNTY OF HAMILTON
AND
HIRAM BENNETT, Treasurer.

No. 174.

IN ERROR TO THE SUPREME COURT OF IOWA.

ARGUMENT OF DEFENDANT.

D. D. CHASE,
Solicitor for Respondent.

J. D. HUNTER, Printer, Webster City, Iowa.

IN THE

SUPREME COURT

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UNITED STATES.

OCTOBER TERM, 1879.

EDWIN C. LITCHFIELD,
Plaintiff in Error,
vs.
THE COUNTY OF HAMILTON
AND
HIRAM BENNETT, Treasurer.

STATEMENT.

This action was commenced in the District Court of Hamilton County, Iowa, in 1868, by Edwin C. Litchfield, the Plaintiff, to restrain the County and its Treasurer from selling the lands of plaintiff, and others, for the delinquent taxes then standing against them on the books of the Treasurer of the County for the years A. D. 1859, 1860, 1861, 1862, 1863, 1864 and 1865; and also to procure the cancellation of a portion of said taxes, and the interest and penalties that had accrued thereon for all the years, by reason of neglecting payment when due.

The relief sought is predicated upon the assumption that a portion of the taxes are illegal and void—that the title was in the United States when the taxes on these lands were levied for the years 1859 and 1860; and that during all the other years the owners were embarrassed in their titles and involved in litigation by reason of the wrongful acts

of the Executive Officers of the United States and the State of Iowa, and that they were thereby absolved from the payment of their taxes pending such litigation.

The lands in question are what is known as Des Moines River lands, lying above the Raccoon Forks, in Hamilton County, Iowa, and are included in the list of lands certified to the State of Iowa under the Act of Congress, approved August 8, 1846, entitled, "An Act granting certain lands to the Territory of Iowa to aid in the improvement of the Des Moines River in said Territory," and were conveyed to the Des Moines Navigation & Rail Road Company May 3, 1858, in pursuance of an Act of the Legislature of the State of Iowa. The Plaintiff is a grantee of the Des Moines Navigation & Rail Road Company, and he and all other parties represented by him in this suit, derive title through the State of Iowa under the Acts above referred to, and the Joint Resolution of Congress, approved March 2, 1861, entitled, "Joint Resolution to quiet title to lands in the State of Iowa," and the Act of Congress of July 12, 1862, entitled, "An Act confirming a land claim in the State of Iowa, and for other purposes."

These facts are stated in the Petition and admitted in the Answer. The District Court of the State held and decided that these lands were not taxable for the years 1859 and 1860, and enjoined the collection thereof. And that the taxes for all the other years, together with the Statutory penalties, were legal, and that the Treasurer was authorized to sell the lands therefor. Both parties appealed to the Supreme Court of the State from the decision of the District Court, and that Court held and decided that all the taxes and penalties for each and all of the years were legal and must be paid, and directed the Treasurer of the County to proceed to collect the same by sale of the lands as provided by law. The canse comes before this Court on error to the Supreme Court of Iowa and the certificate of the Presiding Judge of that Court.

ARGUMENT.

I have not seen the Argument or Brief of Counsel for the Plaintiff in Error, and do not know what Errors he assigns. It seems to me, however, that there are three fundamental questions for consideration :

1. Are the taxes on these lands for any of the years mentioned, illegal.

2. Has a Court of Equity power to relieve a party from the statutary penalties accruing on his lands from the non-payment of his taxes when due, and if so, do the facts in evidence authorize it in this case.

3. To what extent has the Court jurisdiction to review this case.

I will therefore proceed to consider these questions in their order.

First. Are the taxes on these lands for any of the years mentioned, *illegal.*

In order to determine when these lands became taxable, it will be necessary to consider the nature and object of the original grant and all supplemental thereto, together with the acts of the Officers of the State and General Government under them.

Congress desired to improve the navigation of the Des Moines river. This was the object of the grant of August 8, 1846, whereby one equal moiety in alternate sections of the public lands in a strip five miles in width on each side of the Des Moines river, to be selected within said territory, by an agent, or agents to be appointed by the Governor, thereof, subject to the approval of the Secretary of the Treasury of the United States, was granted and conveyed to the then Territory of Iowa. By the terms of this act, whenever the territory was admitted as a State, the lands granted were to become the property of the State in trust, to be expended in improving the navigation of the river. The agent ap-

pointed by the Governor, selected for the State, the "odd sections as designated on the map furnished by the General Land Office," and so reported to the Government, and these selections were subsequently approved, and the lands certified to the State by the proper officers of the General Government. After the State selections under this grant, had been approved, it commenced the improvement of the river, and sold the lands as necessary from time to time to provide the means to carry on the work. Most of the lands below the Raccoon Forks had been sold and otherwise disposed of by the General Government, so that very few of the lands below the Forks passed to the State under the grant. But the Executive Officers of the United States and State of Iowa, were then of the opinion that the grant extended above the Forks to the north line of the State, and so the State of Iowa expended a large amount of money to secure the needed improvement in the navigation of the river, in excess of the value of the lands enuring to the State under the grant south of the Forks. The Des Moines Navigation and Railroad Company performed a large amount of labor in the improvement of the river under a contract with the State and the General Assembly of the State passed a joint resolution of settlement with the Company, March 22, 1858, whereby the State agreed to convey to the Company all the lands then remaining unsold, and which had been approved and certified to the State by the General Government and afterwards, on the 18th day of May, 1858, the State of Iowa executed its patent to said Company for said lands. The lands so certified and conveyed to said Company include the lands in question in this suit. Immediately after the decision of this Court in Pacific Railroad Company vs. Litchfield was announced (23 Howard, 66) and it came to be known that this grant of August 1846, did not extend above the Raccoon Forks, the owners of the land "bona fide," purchasers from the State began to ask indemnity of the State and General Government and thereupon the joint resolution of March 2, 1861, was passed, providing that "all the title which the United States still retains in the tract of

land along the Des Moines river and above the mouth of the Raccoon Forks thereof in the State of Iowa, which have been certified to said State improperly by the Department of the Interior, as part of the grant by act of Congress, approved August 8, 1846, and which is now held by bona fide purchasers under the State of Iowa be, and the same is hereby relinquished to the State of Iowa."

The lands referred to in the resolution clearly include the lands in suit. They have been selected and improperly certified as a part of the grant of August 8, 1846, and are now held by bona fide purchasers under the State of Iowa. They are the parties for whose benefit the resolution was passed, and *immediately* after its passage *their title became perfect.* By the very *terms* of the resolution Congress *relinquished* to the State *all the title* that the General Government had in these lands, and the State having conveyed the lands, the title received from the Government enured to the benefit of its *grantees.* Since the passage of this resolution, neither the State or General Government has had any title whatever to these lands.

Mr. Litchfield, the plaintiff in this suit, has expressed himself very positively upon this subject, as counsel for the respondent in his argument filed in this Court, in the case of Hannah Riley, December Term, 1869, on page 18, he says, "We submit therefore, that the joint resolution of Congress of 2d of March, 1861, was in, and of itself a direct grant which ex proprio vigore transferred to the State of Iowa and its grantees "all the title" which the United States had, until then retained in all the lands above the Raccoon Forks, which had been certified as a part of the grant of August, 1846." Again on the same page he says, "The Act of 1846 vested the title at once as to all the lands which were below the Raccoon Forks, and if the certificates issued under that act for the lands above the Raccoon Forks had been properly issued, that is, if the law of 1846 had authorized them they would have been evidence to

Iowa of a good title from the 8th of August 1846. The joint resolution of 2d of March, 1861, confirmed these certificates and thereby made them as effectual as if they had been authorized by the act of August, 1846, consequently the title to the lands specified in the joint resolution was made good, not merely from the date of that resolution, but by relation back, the title was made good from the 8th of August, 1846, when the law was enacted under which the certificates were issued. *The legal effect of the confirmation by the joint resolution of* 1861, *was to sanction the construction which the Executive Officers had given to the act of* 1846 *and to legalize the transfer of the title which they had attempted to make in carrying out that construction.* It is the same as if Congress had said in terms that "the certificates issued under the Act of 8th of August 1846, are hereby confirmed." Consequently the State of Iowa and its grantees took a good title to all the lands which were certified under that act, whether the lands are above or below the Raccoon Forks, and that title is in every respect the same as if all said lands had been included in the grant made by the act of 1846. Such we understand to be the effect of the joint resolution of 1861.

I understand that Mr. Litchfield now claims that the title to their lands was not settled and perfected in the grantees of the State until some time in May, 1866. That prior to that time they belonged to the United States, because they had not been certified under the subsequent act prior to that time, and I have quoted from his argument in the "Wells-Riley" case to show that his opinions have recently undergone a change. "*He wants this land, but he don't want to pay the taxes on them.*"

That the title, however, passed out of the United States to the State of Iowa, and enured to the benefit of its grantees, under and by virtue of the joint resolution of March 2, 1861, is now well settled by repeated decisions of the Court. In the case of Williams vs. Baker, 17 Wallace,

145, Mr. Justice Miller in delivering the opinion of the Court, on page 150, says, "This Court in the Wolcott case, decided two propositions. 1st. * * * 2d, That by the joint resolution of 1861, the title erronously certified to the State under the act of 1846, was validated, and made good, and that *thereafter* Wolcott had no cause of action on his covenant of warranty." If the title was still in the United States or the State of Iowa, he would have had a good cause of action. *Hence it is apparent that these lands were taxable on and after March* 2, 1861.

Plaintiff claims *that lands are not taxable until after the legal title passes out of the United States*, and that inasmuch as the *legal* title to the lands in question remained in the United States until after the passage of the joint resolution of March 2, 1861, *they were not taxable prior to that time.*

Lands MAY *be taxable before the legal title passes from the United States.* This depends upon circumstances.

These lands were supposed to have beeu vested in the State for the improvement of the Des Moines River. They were set aside and certified to the State for that purpose, and the General Government directed their appropriation to the *improvement* of the navigation of the *river.* They were *expended* by the State for the General Government under the belief that the title had been vested in the State, and they were conveyed to the Des Moines Company in payment of work actually done on the river in May, 1858. The Des Moines Company took actual possession of their lands under the deeds and patents from the State, and they and their *grantees* have remained in possession and have enjoyed the rents and profits thereof. And when it was found that the State did not make title to these lands under the Act of Congress of August 8, 1846, the General Government immediately recog-

nized the *equity* of the bona fide purchasers of these lands from the State, and to invest them with the legal title, passed the joint resolution of March 2, 1861, relinquishing to the State the *title* to these lands, and thereby confirming the titles of all persons who had purchased of the State to carry on the improvements of the *river*.

These parties became the equitable owners of the lands in 1858—the Government had received pay for them—and because of this *equitable* right Congress passed the joint resolution to *validate and confirm these titles.*

A confirmatory Act relates back to and takes effect from the date of the transaction which is thus confirmed, and makes the transaction so confirmed as valid and effectual in law as if it had been authorized by law when it occurred.

In United States vs. Arrendondo, 6 Peters, 691, on page 713, the Court states the effect of a confirmation of title as follows: "When Congress have, by confirming the report of Commissioners or other tribunals, sanctioned the rules and principles on which they were founded, it is a legislative affirmance of the construction put by these tribunals on the laws conferring the authority, and prescribing the rules by which it should be exercised; or which is to all intents and purposes of the same effect in law, it is a legislative ratification of an act done without previous authority, and this subsequent recognition and adoption is of the same force as if done by pre-existing power, and relates back to the act done."

Applying, then, these well established rules, the joint resolution of March 2, 1861, and Act of July 12th, 1862, ratified the acts of the officers of the General Government in certifying and approving said lands to the State. These Acts are a recognition of a right and title possess-

ed by the grantees of the State in and to said lands. They confirm the equitable title of the grantees of the State to their lands under the patents of 1858, and vest in them the legal title from that date.

I assume, therefore, that these lands were taxable in the hands of the bona fide purchasers from the State on and after the date of their patent in 1858.

The Supreme Court of Iowa, at an early day, was called upon to determine whether lands were taxable before the legal title passed from the General Government, and the Court were in accord in holding that whenever a person has an equitable title or interest in land *it is taxable*, although the legal title may still be in the government. And it has been the settled law of the State ever since.

In Stockdale vs. Webster Co., 12 Iowa, 537, the Court *lay down this rule.* Wright, Judge, in delivering the opinion of the Court, said, "It is admitted that the property is liable to taxation if the title was out of the United States." If by this it is meant that the *full legal title* must be in some other person than the government before the land could be taxed, *the proposition would not be tenable.* The complainant would have a taxable interest, so to speak, without having a legal title.

The property of the United States is not subject to taxation. And the Statute, after making other exemptions, *declares that all other* property, real and personal, including lands and town lots, &c., are subject to such taxation. (Code, Sec. 456). These terms, by Statutory definition, include *all rights* to lands, tenements and hereditaments, as well as legal. (Sec. 26, Chap. 8). And aside from the Statutory definition

we understand property in lands to include every species of title incohate or complete; that it embraces those rights which lie in contracts executory as well as executed." * * *

"Once more the property does not belong to the United States within the meaning of Sec. 7 of the ordinance admitting Iowa into the Union. (Rev. p. 966). It is not the property of the United States nor any interest of the government therein that is taxed, but the right, interest or title of the defendants thereto, whether denominated equitable, incomplete or complete and perfect, that is made to bear its due proportion of the public burdens. Protected in the use and enjoyment of his land he, to the extent of the *value* of that property, should be taxed to assist in upholding the government and the laws."

Hence it appears that under the laws and decisions of Iowa, lands may be taxed when the legal title is still in the general government. And it appears to be the policy of that State *to tax* whatever *interest* a party may have in lands.

If the opinion above given is authority, it establishes the following propositions:

1st. That under the laws of Iowa *any interest that a person may have* in lands is a *taxable interest.*

2nd. That lands are taxable although the legal title is still in the United States in all cases where the equitable title or interest has passed.

3rd. That snch taxation is not an infringement of the rights of the United States, or in violation of Section 7 of the Ordinance admitting Iowa into the Union.

In Stryker vs. Polk County, 22 Iowa, 131, the Supreme Court of Iowa, passed upon the identical questions involved in this case, and held that these lands were taxable for the years 1859 and 1860, as well as subsequent years. The Court seems to have no doubt about the taxability of these lands subsequent to their disposition by the State, and inasmuch as this opinion represents the legal judgment of the State, I will reproduce it in my argument (I hope counsel on the other side will excuse me). Wright, Judge, "The question in this case is not when did plaintiff acquire a full, clear, complete and indefeasible title to this land. Nor have we anything to do with any possible claim of title on the part of any other person or corporation. In cases of this character, it would be without precedent and in violation of the plainest rights of property, to undertake to adjudicate possible or probable conflicting claims. Our duty is simply to inquire whether this land was the property of the United States, or of this State, for any of the years named within the meaning of our revenue laws; for if so, it was exempt for such year or years. Or, to state the proposition in another form, whether under said law any person had an interest therein liable to taxation. For the law is, aside from exemption, that all property, real or personal is subject to taxation, and this includes lands bought from the United States and from this State, and whether bought on credit or otherwise, and all rights thereto and interest therein equitable as well as legal. The policy of the law is to make all property not exempt by express enactment, bear its due proportion of the burden of taxation.

Plaintiff claims that he was a bona fide purchaser under the State of Iowa, and hence is clearly within the language of the joint resolution of November, 1861. His title thus taken from the State has never failed, but he admits is now, by reason of the subsequent legislation of Congress and this State, perfect and complete.

The equity at least acquired by the original certificate from the fed-

eral authorities, and the deed from the State, formed the basis upon which he now claims a perfect title. Such a case is very different from one when the taxing power insists upon imposing the burden, and at the same time denies that any title of any kind has ever passed from the State or United States.

Prior to 1859, by the concurrent action and by the construction, up to December of that year, given to the act of August 1846, plaintiff had all the needed—all the usual evidence of title. The decision of the Supreme Court overturned this construction, and if there had been no further legislation, plaintiff would, we may admit, have been without title. But Congress in 1861 made not a new grant, but for the purpose of giving effect to and carrying out the construction placed upon the original act relinquished to the State, for the use of bona fide purchasers, "all the interest which the United States still retained." If plaintiff from that time did not have a taxable interest in this land, we do not well see how he could acquire it. He held under a deed from the State; the State claimed under the original grant, the title being duly certified, he was a "bona fide purchaser," and the title still retained by the United States was relinquished to the State for his use. The subsequent action on the part of the State and federal authorities was necessary that the proper officers might know the specific tracts thus held by bona fide purchasers. The United States had already in the manner contemplated by the act of 1846, parted with its title; the State upon the faith of the title thus acquired, had sold and conveyed, and the joint resolution was intended as a matter of justice and right, to secure and quiet bona fide purchasers in their titles, unsettled as they were by the decision of the Supreme Court. And if from this time forward, such purchasers were not liable to the burdens, neither ought they to claim the rights and advantages of owners, and yet, should the question be presented in the latter form, or should this right be denied, we hazard nothing in saying that this legislation would be found by

those in plaintiff's position at once to have a wonderfully curative power. Conceding then that this land was most clearly liable to taxation after March, 1861, it only remains to inquire whether it was liable prior to that time. The deed was made to the State by this company in 1858, and by the company to plaintiff in 1859. If taxable in his hands so it was in the hands of the company, and hence for 1859, and our opinion is that holding the title as he did, the joint resolution of 1861 for the purpose of the present inquiry made it as good from the time of the first conveyance by the State as it was after such congressional action. Plaintiff took title, claimed under it and this joint resolution recognized the validity of the claim, this, if it had any effect, by relation operated upon the title from the time it passed from the State.

The technical, legal title may have remained in the United States, but plaintiff certainly had a right which had been recognized by the concurrent action of the authorities. And if it be conceded that plaintiff could not, in a judicial form, have enforced his right, yet as the federal government did afterwards relinquish to him all interest, the effect was *not* to make a new grant, but to recognize the equitable force of the one under which plaintiff had before that time claimed. The *absolute* title within the meaning of our statute exempting from taxation the property of the federal government *was not in the United States.*

The interest held before, however, was taxable, and as clearly so as after the relinquishment, the exception is in favor of the United States, and not of one holding and claiming under it For cases in this State bearing upon the point made, see Stockdale vs. Tr. of Webster Co. 12 Iowa, 536, Homestead Co. vs. Garmore, 21 id., Dubuque and Pacific Railroad Co. vs. Webster Co., id., Adams vs. Beach, 19 id., 61, Fremont Co. vs. B. & M. R. R. Co., present term."

This opinion was announced in June, 1867, and was concurred in by all the members of the Court.

The opinion of the Supreme Court of Iowa, in the case at bar was announced Oct. 27, 1874, and is reported in 40 Iowa, 66.

These decisions are the Judgment of the highest Court of Iowa, and they are conclusive of *most*, if not all, the questions involved in this case.

In Township of Elmwood vs. Marcy, 92 U. S., 294, Mr. Justice Davis, in pronouncing the opinion of the Court said, "We have always followed the highest Court of this State in its construction of its own constitution and laws."

In Citizens Bank vs. Board of Liquidation, 98 U. S., 141, the Court said, "In fact being the construction of a State Statute by a State Court it controls us."

The case of Ross vs. The Board of Supervisors of Ontagamie Co., 12 Wis., 29, is analogous to the case at bar. In this case Ross settled prior to July 6th, 1853, upon a part of the even numbered sections selected by the Governor, subject to the approval of the President, under the act of Congress of March 2, 1849, to make up the quantity of land due the State, under the act of August 8th, 1846, granting lands for the improvement of the Fox and Wisconsin rivers, and in 1854 claimed a right by virtue of such settlement, to purchase said land of the Fox and Wisconsin Improvement Company (to which the State had transferred its interest in said grant, with a reservation of the right of preemption to settlers thereon,) proved his right and paid said company for the land and took a certificate of purchase thereof.

The selections made by the Governor under the act of March 2, 1849, were not confirmed or approved by the President. June 9th, 1858, Congress passed an act confirming said selection to the State as part of said grant of Aug. 8th, 1846, and declaring valid the title of purchasers

as though said selections had been made in conformity with law, and Jan. 26th, 1859, plaintiff received conveyance from the company. The land was assessed for taxation in 1855. The Court held that he acquired an interest or estate in such land which was liable to taxation as real property, in 1855, under the laws of the State, although the legal title thereto did not become vested in the State or its assigns, until Congress, by act of June 9th, 1858, enacted that the land should be confirmed to the State as a part of said grant of August 8th, 1846. As in the case at bar, the confirmation related back, and made his title good from the time he first purchased, and also rendered the land subject to taxation from that time.

This Court has decided that the title to these lands became perfect in the bona fide purchasers of the State under the joint resolution of March 2d, 1861, that these titles had their inception in the act of August 8th, 1846, and that the joint resolution was a confirmation of an equitable right or interest in the lands held and owned by the bona fide purchasers of the State, under and by virtue of the patent or deed executed by the State to the Des Moines Company in May, 1858.

5 Wallace, 681, Wolcott vs. Des Moines Co.
17 Wallace, 144, Williams vs. Baker.

I understand this Court to hold that lands are not exempt from taxation under State law, simply because the legal title is in the United States. That in all cases when the Government has parted with the equitable title or right, the land is not exempt from taxation by the State. Railway Co. vs. Prescott, 16 Wallace, 603.

In Railway Co. vs. McShane, 22 Wallace, 461, Mr. Justice Miller who delivered the opinion of the Court, in speaking of the Prescott case, says, "This Court reaffirmed the doctrine that lands which had constituted a part of the public domain, might be taxed by the State before the government had parted with the legal title by issuing a patent, but that this could only be done when the right of the patent was complete, and the equitable title fully vested in the party, without anything more to be paid, or any act to be done going to the foundation of his right."

Under this rule of law it seems to be clear that the lands in question were subject to taxation after 1858.

But the plaintiff challenges an examination of the act of Congress, approved March 3, 1845, providing for the admission of the States of Iowa and Florida into the Union.

In the 7th section of the act it is provided, "That said States of Iowa and Florida are admitted into the Union on the express condition that they shall never interfere with the primary disposition of the public lands lying within them, nor levy any tax on the same, whilst remaining the property of the United States."

In the supplemental act the following language is used, "And that no tax shall be imposed on lands the property of the United States."

This refers to the "public lands," lands which have not been separated from the public domain in any manner, and to which no person has any right but the General Government. Lands that have not been sold or in any manner disposed of.

It is the property of the United States that the State is prohibited from taxing.

The very moment lands cease to be the *property* of the United

States they are liable to taxation by the State, and such taxation is not in violation of this Congressional inhibition.

The statute of Iowa is of the same general import with an additional clause prohibiting the taxation of State lands.

The true intent and meaning of both these *statutes* is to prevent the taxation of *Government* property.

These acts of Congress are general provisions, and impose no additional burdens on the State of Iowa, Such provisions are not intended to prohibit the State from laying a tax *upon any interest* that a person may have in lands, and the statutes of Iowa, as we have seen expressly authorize it. School lands, where the title is in the State, are taxed the same as other lands, and a sale of such lands for taxes only disposes of such interest as the purchaser from the State may have in them. But in this case it is not material to determine whether the State may tax a persons interest in lands where the legal title and some equitable right remains in the Government. The purchasers from the State became the equitable owners of these lands before any of the taxes were levied. The General Government had received payment in full, and the legal title vested in them March 2d, 1861, and by relation made their titles good from the date of their patent in 1858.

It is clear, therefore, that the taxation of these lands is not the taxation of Government property.

Complainant further insists, that if by joint resolution of March 2d, 1861, his title became perfect, his lands would not be subject to taxation for the year 1861, by reason of the provisions of section 711, Revision of 1860. By section 736 of the Revision of 1860, the assessment for each year was required to be closed on or before the second Monday in April. If therefore complainant acquired title before the second

Monday in April 1861, the land would be subject to taxation for that year. Sully vs. Poorbaugh, 45 Iowa, 455.

Conceding that complainant acquired title under the joint resolution of March 2d, 1861, the exemption from taxation for the year 1861 is claimed under the State laws of Iowa, which have been many times construed by the Supreme Court of Iowa, and such construction in this case should be considered final by this Court.

Complainant further insists that owing to certain alleged irregularities and illegalities, on the part of the officers charged with the assessment, levy and collection of the taxes he is entitled to the relief asked.

1st. As to the classification. Chapter 173, Laws of Iowa, 1862, provides: "The Board of Supervisors of each county, shall at their meeting in January of each year, classify the several descriptions of property to be assessed for the purpose of equalizing such assessment."

The law contemplates that some standard shall be fixed by the Board for the guidance of the assessors in making their valuations, that all the property in the several townships of the county, should be so assessed as to bear its just share of the burden of taxation. Complainant charges no excessive or unjust valuation. If he was not satisfied therewith, it was his duty to apply to the Board of Supervisors of the county for the correction of any error at the time designated by the statute. The statute Rev. 1860, Sec. 739 constituted said Board of Supervisors a tribunal for the equalization of assessments, and the remedy thus provided is exclusive, Macklot vs. the City of Davenport, 17 Iowa, 387.

2d. As to warrant in tax list, in the case of Parker vs. Sexton & Son, 29 Iowa, 425, it is said by the Court: "For the sale of real

property for the payment of taxes, the treasurer finds his authority in sections 763, 764 and 765. * * * the mandate and authority for the sale of real estate for taxes are very clearly and specifically given by the provisions themselves, and that too without any referencs to or aid from the tax warrant—the power to sell real estate is derived directly from the statute."

In Huxley vs. Powell Levy & Co., 31 Iowa, 65, it is said, "The tax warrant is not so essential to the valid exercise of the taxing power that without it no charge upon the lands can be collected. There is nothing inherent in the subject of taxation which renders the warrant essential."

3d. Complainant insists that because the treasurer failed to offer for sale, and sell his lands at tax sale at the time directed by statute, he is entitled to the relief claimed.

The public may complain, but complainant cannot object to the lenity or forbearance extended him.

II.

Complainant insists that if his lands were taxable for any or all of these years, his equities are such as to excuse non-payment and that in any event he should be released from the payment of the penalties imposed by Statute. In other words he asks this Court, as a Court of equity, by its decree to abrogate the revenue laws of Iowa,

and by the exercise of some power not controlled by municipal law, remit the penalties which, by the Iowa Statutes, and the decisions of its Supreme Court, are made a charge and lien upon complainants land.

He does not base his claim for such relief upon any Act of Congress relating to such penalties, nor upon any legal right, nor upon any ground upon which Courts of equity are authorized to grant relief; but he invokes the Court, in the consideration of this case, to be governed by those ancient rules in which it is said, "equity is a rightwiseness which is tempered with the sweetness of mercy."

Complainant entertained no question as to his title until the decision in the case of Dubuque & Pacific R. R. Co. vs. Litchfield (23 How., 66) was announced at the December Term, 1859. The Joint Resolution of March 2nd, 1861, made good complainant's title, and no action of either the Federal or State officers could or did afterward invalidate it.

At the time of the passage of said resolution, the accrued penalties on the taxes of 1859 amounted to a very small sum, while only one per cent penalty had attached to the tax of 1860, and it was plainly complainant's duty to have at once paid said taxes. It was his duty to pay the taxes for each of the subsequent years as they became due. It was optional with him, as with every other tax-payer, to either pay his taxes or have the penalties prescribed by law attach thereto. He chose the latter alternative, and has now no right to ask the Court to relieve him from the consequences resulting from his own delinquencies. He preferred to take the chances, intending to profit thereby, and he ought not now to complain.

Complainant insists that his title was clouded, and that as a prudent man he could not pay said taxes; yet he claimed an absolute title which has been sustained. Can it be claimed that the rightful owner

of land is exonerated from the payment of his taxes because another wrongfully assumes ownership? Or, because the property is unproductive and the timber stolen? That the operation of the revenue laws is suspended in whole or in part by reason of such adverse claims? That the State and County shall be deprived of its revenue because of the wrongful acts of the officers of the General Government in relation to a matter entirely beyond their control, and in ne manner legally effected by such action? The county officers cannot undertake to examine and vouch for the title of property before proceeding to tax the same. Public officers are not presumed to know the condition of the title to all property subject to taxation. They have only to inquire, is the property subject to taxation? If so, it must be taxed, and if the taxes are not paid the penalties imposed must be collected.

Complainant knew all the facts, and is presumed to have known the law relating to his title. Knowing the facts, it is an elementary principal that his ignorance of the law formed no excuse for the nonpayment of his taxes. While the Auditor of State, and other public officers, may have considered it advisable to stay proceedings for the collection of said taxes, such action furnished no excuse for complainant's neglect. Complainant has relied upon no act or representation of the State, nor been misled thereby to his injury. None of the recognized elements of an estoppel appear in this case. It has been fourteen years since the taxes of 1865 became due. This case has been pending in the Courts twelve years. Complainant has deprived the County of the use of the taxes upon his lands, and put the County to great expense in defending this action. During this time nearly all the penalties have accrued from which complainant seeks to be relieved. He has been successfully claiming and asserting title since March, 1861. The case of Stryker vs. Polk County, 22 Iowa, 137, was decided in 1867, and if not prior to that time complainant should then have paid the taxes and accrued penalty on his lands.

Complainant claims that his offer to pay a part of the taxes, with six per cent interest, should have been accepted and the penalty remitted.

The Board of Supervisors have no authority to give away the county property, much less are they authorized to give away the funds belonging to the State and townships. The penalties on the taxes are added proportionately to each of the several funds levied for State, county, and township purposes, and are beyond the control of the Board. The statute imposing these penalties is peremptory; there is no discretion in the officers charged with their collection. The law is imperative that the Treasurer *shall* collect the penalties therein prescribed. Complainant knew the law and defied it and must now abide the consequences of his contumacy.

Complainant insists that a proper construction of the statute would interpret the word penalties to mean interest when used in relation to taxes.

Revision 1860, Sec. 760, provides: "The treasurer shall continue to receive taxes after they have become delinquent, until collected by distress and sale, but if they are not paid before the first day of March, he shall collect as a *penalty* for non-payment from each taxpayer so delinquent one per cent of the amount of his tax additional, and if not paid before the first of April, he shall collect another one per cent additional and so for each full month which shall expire before the tax shall have been paid. * * *

This section was amended by Laws 9th, General Assembly of Iowa, 1862, Chapter 173 section 18, as follows:

"All of section 760 of said chapter 45 on page 118, to the period following the word "paid," at the end of the seventh line of said section is hereby repealed, and in place thereof it is enacted as follows: The treasurer shall continue to receive taxes after they have become delinquent until collected by distrass and sale, but after they have become delinquent, he shall collect in addition to the tax of each taxpayer so delinquent as a *penalty* for non payment at the rate of one per cent a month on the amount of the tax for the first three month, two per cent a month for the second three months, three per cent a month for the third three months, and four per cent a month for all after nine months. In computing this *penalty* nothing shall be received or collected therefore, if the tax is paid before the first day of March, nor after that time, except for a full month."

Sec. 866, Code of Iowa, 1873, provide:

"The Treasurer shall continue to receive taxes after they become delinquent until collected by distress and sale; but if they are not paid before the first day of March, he shall collect in addition to the tax of each tax payer so delinquent as a penalty for non-payment at the rate, of one per cent a month on the amount of the tax for the first three months, two per cent for the second three months and three per cent a month thereafter. But the *penalty* provided by this section shall not be construed to apply, and shall not apply upon taxes levied by order of any court to pay judgements on city or county bonded indebtedness, and upon such taxes no other penalty than the interest which such judgments draw shall be collected."

Can the penalties imposed by this legislation be construed to mean six per cent interest? Was it the legislative will that the language of the statue should be construed as it reads and the penalties should be collected from the tax payer, who from necessity was a few months in

arrears, but that as to the owner of large tracts who should resist payment for fifteen years, the word penalties should be construed as interest?

There are a few plain and well settled rules for the construction of statutes established by this Court. In the case of Miner vs. The Mechanics Bank, 1 Peters, 64, the Court say: "But no general rule can be laid down upon the subject, further than that exposition ought to be adopted in this as in other cases which carries into effect the true intent and object of tne legislature in the enactment.

In the case of Wilkinson vs. Leland, 2 Peters, 622, the Court say: "This is a legislative act, and is to be interpreted according to the intention of the legislature apparent upon its face. Every technical rule as to the construction or force of particular terms must yield to the clear expression of the paramount will of the legislature.

In the case of United States vs. Fisher, 2 Cranch, 386, the Court say: "When the intent is plain, nothing is left to construction."

Again, in the relation to the construction of revenue laws in the case of Cliquot's Champagne 3 Wal, 145, the Court says: "They should be so construed as to carry out the intention of the legislature in passing them, and most effectually accomplish these objects."

There can be no question that the intent of the legislature was to impose such penalties for the non-payment of taxes as to compel their prompt payment. The legislative will is clearly manifest, and nothing is left to construction.

In the case of Bissell vs. Stewart, 11 Iowa, 251, Bartruff vs. Penny, 15 Iowa, 257, it is expressly held that the penalties imposed by the statute for the non-payment of taxes, are legal, and must be paid.

In the case of the C. R. & M. R. R. Co. vs. Carroll Co 41 Iowa, 191, the Court say: "It is urged that the penalties are onerous, inequitable and oppressive, that they have accrued while plaintiffs were in good faith contesting the rights of defendant to enforce them, and that the qnestions of law involved were doubtful, and justified plaintiffs in resisting the payment of the taxes. That plaintiff will suffer a hardship in the payment of these heavy penalties is very apparent; that the questions involved in the case were doubtful, and the litigation has been prosecuted in good faith, may be conceded, but these things give us no authority to annul a statute and remit a penalty, explicitly provided for and in which defendant has a vested right."

We do not understand that complainant assigns any error of law on the part of the Supreme Court of Iowa, in their decision as to these penalties, but he urges that the equity side of this Court will now relieve against the rules of law governing, and abate their rigor; that it is entirely discretionary with this Court to declare whether complainant shall pay any penalties accrued on his taxes, and what part thereof. That equity, instead of being a part of the law, is a moral virtue which moderates the rigor of the law, and enforces benevolence; that the Court can rise above all law and act with a despotic and sovereign authority. In the language of Selden: "Equity is according to the conscience of him that is chancellor, and as that is larger or narrower, so is equity &c."

The general rule is thus stated in Story's Eq. Juris. Sec. 1326: "When any penalty or forfeiture is imposed by statute upon the doing or omission of a certain act, there courts of equity will not interfere to mitigate the penalty or forfeiture if incurred for it would be it contravention of the direct expression of the legislative will." * * *

The discretion of a court of equity is not to be exercised to abrogate positive statutery enactments, as is stated in the case of Cowper vs.

Cowper, Peere Williams, page 753: "This discretion in no case contradicts or overturns the grounds or principals of law as has been somewhere ignorantly imputed to this court; and as it is said in Rooks case 5th Coke, Rep. 99: "Discrition is a science not to act arbitrarily according to men's wills and private affections, so the discretion which is exercised here, is to be governed by the rules of the law and equity which are not to oppose, but each in its turn to be subservient to the other."

It is one of the most common maxims that equity follows the law. Courts of law and equity are both equally bound and equally profess to interpret statutes according to the true intent of the legislature, each endeavors to fix and adopt the sense of the law in question; neither can enlarge, diminish or alter that sense in a single title. 3 Blackstone Com., 430.

These principles are universally recognized as governing Courts of Equity.

Moore vs. Pendegrast Heirs, 6 J. J. Marshall, 634.
Cobb vs. Thompson, 1 Marshall. 514.
Samuel vs. Winter, 3 Marshall, 482.
Taylor vs. Knox, 5 Dana, 466.
Bond vs. Hopkins, 1 Schoales & Lefroy, 428-9.

There is nothing in the record in this case by which the Court could determine what equitable penalties complainant ought to pay. The case is simply this: The Court is asked to declare that complainant as a grantee of the Des Moines N. & R. R. Co., is not amenable to the laws of Iowa, that an act of the legislature to which the people of Iowa have yielded obedience for eighteen years, and which its courts have declared valid, shall now be suspended and dispensed with in the consideration of this case.

That the statute shall be superseded by the conscience of the Judges and that they shall award the county such penalties as they may consider reasonable.

Complainant insists that the State and county stand in the position of a vendor claiming interest of his vendee. An examination of the authorities cited and the facts upon which the decisions are based show that in none of the cases cited is there any agreement to pay interest. They all determine the liability of parties to pay interest on unpaid purchase money for the land, when there is no express agreement between the parties to pay interest. That when the vendee has been disturbed in his posession *in the absence of an express agreement to pay interest*, the vendee will not be charged therewith.

III.

To what extent has and will the Court exercise jurisdiction to grant complainant relief.

1st. The 5th section of the supplemental Act of Congress of March 3d, 1845, for the admission of Iowa only provides that the State Legislature shall, by an ordinance irrevocable provide, "that the State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulation Congress may find necessary for securing the title in such soil, &c."

The required ordinance was passed by the Legislature and must be considered *substituted* for the act of Congress. No rights claimed under said act of Congress would give this Court jurisdiction. Any relief claimed must be under the ordinance, not under the act of Congress.

Permoli vs. First Municipality, 3 How., 609.

Straeler vs. Graham, 10 How., 97.
Menard vs. Aspasia, 5 Peters, 516.

The questions raised by complainant as to irregularities, illegalities penalties and all other questions, save only the right of exemption claimed by reason of the act of Congress prohibiting the taxation of Government land, are purely and exclusively questions of interpretation of State Laws. There is no federal question involved unless it be as to the taxes of 1859 and 1860. If the Court holds that a Federal question is raised as to the tax of 1859 and 1860, and that complainant acquired title under act of March 2d, 1861, then the decision of the State Court as to all other questions involved, relating to the taxes for 1861, 1862-3-4-5, and penalties thereon, must be received by this Court as conclusive.

Murdoch vs. City of Memphis, 20 Wal. 635.

If a Federal question is involved as to the tax of 1859 and 1860, since complainant claims title under the State, by its patents of May 1858, as between the State and its grantee, the State had a right to tax such interest claimed by complainant under it, an interest which was the basis of his perfect title, and this and other matters in the record are sufficient to maintain the judgment of the State Court notwithstanding the Federal question, and the judgment should therefore be affirmed.

3d. Mere errors are excesses in valuation or hardship or injustice of law will not justify a Court of Equity to interfere by injunction to stay collection of tax. The illegality of the tax and threatened sale of the land for its payment constitute no sufficient ground. State Railroad Tax Cases, 2 Otto, 614.

4th. Section 870 Code of Iowa, 1873, authorizes tax refunded when

improperly paid. Complainant has here a plain and adequate remedy at law, and having such remedy, cannot resort to a court of equity. Dows vs. City of Chicago, 11 Wal., 110.

This case is not on "all fours" with that of complainant against Webster county, submitted at the present term under the 20th Rule and the decision of that case is not we insist decisive of this. That case is on appeal triable *de novo*. This case is here on writ of error, and Federal questions raised, necessarily involved in the determination of the case can only be reviewed.

In conclusion we insist that no Federal question is necessarily involved in the decision of this case. That the issues raised, relate to the construction of State statutes by the Supreme Court of Iowa, which should be regarded by this Court as conclusive.

D. D. CHASE,
Solicitor for Respondent.